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Attorneys for Defendant Nu Mark LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

FONTEM VENTURES B.V., a
Netherlands company; and FONTEM
HOLDINGS 1 B.V., a Netherlands
company,

Plaintiffs,

vs.

NU MARK LCC, a Virginia Limited
Liability Company,

Defendant.

Case No. 2:16-cv-02291 GW(MRWx)

**NU MARK LLC'S ANSWER AND
COUNTERCLAIMS**

DEMAND FOR JURY TRIAL

Judge: Hon. George H. Wu
Courtroom: 10

1 Defendant Nu Mark LLC (“Nu Mark”) respectfully answers the
2 Complaint of Fontem Ventures B.V. (“Fontem Ventures”) and Fontem Holdings 1
3 (“Fontem Holdings”) as follows:

4 **JURISDICTION AND VENUE**

- 5 1. Nu Mark admits the allegations in Paragraph 1 of the Complaint.
6 2. Nu Mark admits the allegations in Paragraph 2 of the Complaint.
7 3. Nu Mark admits that this Court has personal jurisdiction over it and
8 admits that it sells products to distributors located in California. Nu Mark denies all
9 remaining allegations of Paragraph 3.
10 4. Nu Mark denies the allegations in Paragraph 4 of the Complaint.

11 **PARTIES**

- 12 5. Nu Mark is without sufficient knowledge or information to form a
13 belief as to the allegations of Paragraph 5 of the Complaint, and on that basis denies
14 them.
15 6. Nu Mark is without sufficient knowledge or information to form a
16 belief as to the allegations of Paragraph 6 of the Complaint, and on that basis denies
17 them.
18 7. Nu Mark admits the allegations in Paragraph 7 of the Complaint.
19 8. Nu Mark admits the allegations in Paragraph 8 of the Complaint.

20 **ANSWER TO FIRST CLAIM FOR RELIEF**

- 21 9. Answering Paragraph 9 of the Complaint, Nu Mark incorporates its
22 responses in Paragraphs 1-8 by reference as if fully set forth herein.
23 10. Nu Mark admits that United States Patent No. 8,365,742 (the “742
24 Patent”) was issued by the USPTO on February 5, 2013. Nu Mark denies that the
25 patent is valid. Nu Mark is without sufficient knowledge or information to form a
26 belief as to the remaining allegations of Paragraph 10 of the Complaint, and on that
27 basis denies them.
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1 11. Nu Mark admits that it has had knowledge of the ‘742 patent. Nu Mark
2 denies the remaining allegations of Paragraph 11 of the Complaint.

3 12. Nu Mark admits that on May 11, 2015, Vapor Corp served a subpoena
4 identifying the ‘742 patent on Altria Group, Inc. Nu Mark denies the remaining
5 allegations of Paragraph 12 of the Complaint.

6 13. Nu Mark admits that Altria Group, Inc. filed a motion to quash a
7 subpoena served by Vapor Corp in the District Court for the Eastern District of
8 Virginia on May 26, 2015. Nu Mark denies the remaining allegations of Paragraph
9 13 of the Complaint.

10 14. Nu Mark admits that it is a subsidiary of Altria Group, Inc. and that it
11 has had knowledge of the ‘742 Patent since at least May 11, 2015. Nu Mark denies
12 the remaining allegations of Paragraph 14 of the Complaint.

13 15. Nu Mark is without sufficient knowledge or information to form a
14 belief as to the allegations of Paragraph 15 of the Complaint, and on that basis
15 denies them.

16 16. Nu Mark denies the allegations in Paragraph 16 of the Complaint.

17 17. Nu Mark denies the allegations in Paragraph 17 of the Complaint.

18 18. Nu Mark denies the allegations in Paragraph 18 of the Complaint.

19 19. Nu Mark denies the allegations in Paragraph 19 of the Complaint.

20 20. Nu Mark admits that the photographs in the Complaint appear to depict
21 samples of MarkTen, MarkTen XL, and GreenSmoke products. Nu Mark is without
22 sufficient knowledge or information to form a belief as to the remaining allegations
23 of Paragraph 20 and on that basis denies them.

24 **MarkTen**

25 21. Nu Mark denies the allegations of Paragraph 21 of the Complaint.

26 22. Because the claims of the patent have yet to be construed, Nu Mark is
27 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 22.

3 23. Nu Mark admits that the MarkTen product includes a battery
4 component and a housing. Because the claims of the patent have yet to be
5 construed, Nu Mark is without sufficient knowledge or information to form a belief
6 as to whether the product meets the stated limitation “as recited in” the claims, and
7 on that basis denies the remaining allegations of Paragraph 23.

8 24. Nu Mark admits that the MarkTen product contains liquid. Because the
9 claims of the patent have yet to be construed, Nu Mark is without sufficient
10 knowledge or information to form a belief as to whether the product meets the stated
11 limitation “as recited in” the claims, and on that basis denies the remaining
12 allegations of Paragraph 24.

13 25. Nu Mark admits that the MarkTen product includes a passage for
14 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the remaining allegations of Paragraph 25.

18 26. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the remaining allegations of Paragraph 26.

22 27. Nu Mark admits that the MarkTen product includes a heating
23 component. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 27.

1 28. Nu Mark admits that the MarkTen product contains liquid. Because the
2 claims of the patent have yet to be construed, Nu Mark is without sufficient
3 knowledge or information to form a belief as to whether the product meets the stated
4 limitation “as recited in” the claims, and on that basis denies the remaining
5 allegations of Paragraph 28.

6 29. Nu Mark denies the allegations of Paragraph 29 of the Complaint.

7 30. Because the claims of the patent have yet to be construed, Nu Mark is
8 without sufficient knowledge or information to form a belief as to whether the
9 product meets the stated limitation “as recited in” the claims, and on that basis
10 denies the remaining allegations of Paragraph 30.

11 31. Nu Mark admits that the MarkTen product includes a battery
12 component. Because the claims of the patent have yet to be construed, Nu Mark is
13 without sufficient knowledge or information to form a belief as to whether the
14 product meets the stated limitation “as recited in” the claims, and on that basis
15 denies the remaining allegations of Paragraph 31.

16 32. Nu Mark admits that the MarkTen product includes a passage for
17 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
18 without sufficient knowledge or information to form a belief as to whether the
19 product meets the stated limitation “as recited in” the claims, and on that basis
20 denies the remaining allegations of Paragraph 32.

21 33. Because the claims of the patent have yet to be construed, Nu Mark is
22 without sufficient knowledge or information to form a belief as to whether the
23 product meets the stated limitation “as recited in” the claims, and on that basis
24 denies the remaining allegations of Paragraph 33.

25 34. Nu Mark admits that the MarkTen product includes a heating
26 component. Because the claims of the patent have yet to be construed, Nu Mark is
27 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 34.

3 35. Nu Mark admits that the MarkTen product contains liquid. Because the
4 claims of the patent have yet to be construed, Nu Mark is without sufficient
5 knowledge or information to form a belief as to whether the product meets the stated
6 limitation “as recited in” the claims, and on that basis denies the remaining
7 allegations of Paragraph 35.

8 **MarkTen XL**

9 36. Nu Mark denies the allegations of Paragraph 36 of the Complaint.

10 37. Because the claims of the patent have yet to be construed, Nu Mark is
11 without sufficient knowledge or information to form a belief as to whether the
12 product meets the stated limitation “as recited in” the claims, and on that basis
13 denies the remaining allegations of Paragraph 37.

14 38. Nu Mark admits that the MarkTen XL product includes a battery
15 component and a housing. Because the claims of the patent have yet to be
16 construed, Nu Mark is without sufficient knowledge or information to form a belief
17 as to whether the product meets the stated limitation “as recited in” the claims, and
18 on that basis denies the remaining allegations of Paragraph 38.

19 39. Nu Mark admits that the MarkTen XL product contains liquid.
20 Because the claims of the patent have yet to be construed, Nu Mark is without
21 sufficient knowledge or information to form a belief as to whether the product meets
22 the stated limitation “as recited in” the claims, and on that basis denies the
23 remaining allegations of Paragraph 39.

24 40. Nu Mark admits that the MarkTen XL product includes a passage for
25 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
26 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 40.

3 41. Because the claims of the patent have yet to be construed, Nu Mark is
4 without sufficient knowledge or information to form a belief as to whether the
5 product meets the stated limitation “as recited in” the claims, and on that basis
6 denies the allegations of Paragraph 41.

7 42. Nu Mark admits that the MarkTen XL product includes a heating
8 component. Because the claims of the patent have yet to be construed, Nu Mark is
9 without sufficient knowledge or information to form a belief as to whether the
10 product meets the stated limitation “as recited in” the claims, and on that basis
11 denies the remaining allegations of Paragraph 42.

12 43. Nu Mark admits that the MarkTen XL product contains liquid.
13 Because the claims of the patent have yet to be construed, Nu Mark is without
14 sufficient knowledge or information to form a belief as to whether the product meets
15 the stated limitation “as recited in” the claims, and on that basis denies the
16 remaining allegations of Paragraph 43.

17 44. Nu Mark denies the allegations of Paragraph 44 of the Complaint.

18 45. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the allegations of Paragraph 45.

22 46. Nu Mark admits that the MarkTen XL product includes a battery
23 component. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 46.

1 47. Nu Mark admits that the MarkTen XL product includes a passage for
2 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 47.

6 48. Because the claims of the patent have yet to be construed, Nu Mark is
7 without sufficient knowledge or information to form a belief as to whether the
8 product meets the stated limitation “as recited in” the claims, and on that basis
9 denies the allegations of Paragraph 48.

10 49. Nu Mark admits that the MarkTen XL product includes a heating
11 component. Because the claims of the patent have yet to be construed, Nu Mark is
12 without sufficient knowledge or information to form a belief as to whether the
13 product meets the stated limitation “as recited in” the claims, and on that basis
14 denies the remaining allegations of Paragraph 49.

15 50. Nu Mark admits that the MarkTen XL product contains liquid.
16 Because the claims of the patent have yet to be construed, Nu Mark is without
17 sufficient knowledge or information to form a belief as to whether the product meets
18 the stated limitation “as recited in” the claims, and on that basis denies the
19 remaining allegations of Paragraph 50.

20 **GreenSmoke**

21 51. Nu Mark denies the allegations of Paragraph 51 of the Complaint.

22 52. Because the claims of the patent have yet to be construed, Nu Mark is
23 without sufficient knowledge or information to form a belief as to whether the
24 product meets the stated limitation “as recited in” the claims, and on that basis
25 denies the allegations of Paragraph 52.

26 53. Nu Mark admits that the GreenSmoke product includes a battery
27 component and a housing. Because the claims of the patent have yet to be
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1 construed, Nu Mark is without sufficient knowledge or information to form a belief
2 as to whether the product meets the stated limitation “as recited in” the claims, and
3 on that basis denies the remaining allegations of Paragraph 53.

4 54. Nu Mark admits that the GreenSmoke product contains liquid. Because
5 the claims of the patent have yet to be construed, Nu Mark is without sufficient
6 knowledge or information to form a belief as to whether the product meets the stated
7 limitation “as recited in” the claims, and on that basis denies the remaining
8 allegations of Paragraph 54.

9 55. Nu Mark admits that the GreenSmoke product includes a passage for
10 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
11 without sufficient knowledge or information to form a belief as to whether the
12 product meets the stated limitation “as recited in” the claims, and on that basis
13 denies the remaining allegations of Paragraph 55.

14 56. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the allegations of Paragraph 56.

18 57. Nu Mark admits that the GreenSmoke product includes a heating
19 component. Because the claims of the patent have yet to be construed, Nu Mark is
20 without sufficient knowledge or information to form a belief as to whether the
21 product meets the stated limitation “as recited in” the claims, and on that basis
22 denies the remaining allegations of Paragraph 57.

23 58. Nu Mark admits that the GreenSmoke product contains liquid. Because
24 the claims of the patent have yet to be construed, Nu Mark is without sufficient
25 knowledge or information to form a belief as to whether the product meets the stated
26 limitation “as recited in” the claims, and on that basis denies the remaining
27 allegations of Paragraph 58.

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1 59. Nu Mark denies the allegations of Paragraph 59 of the Complaint.

2 60. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the allegations of Paragraph 60.

6 61. Nu Mark admits that the GreenSmoke product includes a battery
7 component. Because the claims of the patent have yet to be construed, Nu Mark is
8 without sufficient knowledge or information to form a belief as to whether the
9 product meets the stated limitation “as recited in” the claims, and on that basis
10 denies the remaining allegations of Paragraph 61.

11 62. Nu Mark admits that the GreenSmoke product includes a passage for
12 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
13 without sufficient knowledge or information to form a belief as to whether the
14 product meets the stated limitation “as recited in” the claims, and on that basis
15 denies the remaining allegations of Paragraph 62.

16 63. Because the claims of the patent have yet to be construed, Nu Mark is
17 without sufficient knowledge or information to form a belief as to whether the
18 product meets the stated limitation “as recited in” the claims, and on that basis
19 denies the allegations of Paragraph 63.

20 64. Nu Mark admits that the GreenSmoke product includes a heating
21 component. Because the claims of the patent have yet to be construed, Nu Mark is
22 without sufficient knowledge or information to form a belief as to whether the
23 product meets the stated limitation “as recited in” the claims, and on that basis
24 denies the remaining allegations of Paragraph 64.

25 65. Nu Mark admits that the GreenSmoke product contains liquid. Because
26 the claims of the patent have yet to be construed, Nu Mark is without sufficient
27 knowledge or information to form a belief as to whether the product meets the stated
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1 limitation “as recited in” the claims, and on that basis denies the remaining
2 allegations of Paragraph 65.

3 66. Nu Mark denies the allegations of Paragraph 66 of the Complaint.

4 67. Nu Mark denies the allegations of Paragraph 67 of the Complaint.

5 68. Nu Mark denies the allegations of Paragraph 68 of the Complaint.

6 69. Nu Mark denies the allegations of Paragraph 69 of the Complaint.

7 70. Nu Mark admits that Exhibit P to the Complaint states: “MarkTen® e-
8 vapor products are designed to work together, in order to give vapers the best
9 possible vaping experience. Using MarkTen® e-vapor products with non-
10 MarkTen® e-vapor products may be unsafe, and is not advised.” Nu Mark denies
11 the remaining allegations of Paragraph 70 of the Complaint.

12 71. Nu Mark admits that Exhibit P to the Complaint states: “MarkTen® e-
13 vapor products are designed to work together, in order to give vapers the best
14 possible vaping experience. Using MarkTen® e-vapor products with non-
15 MarkTen® e-vapor products may be unsafe, and is not advised.” Nu Mark denies
16 the remaining allegations of Paragraph 71 of the Complaint.

17 72. Nu Mark admits that Exhibit P to the Complaint states: “Customers
18 should note that using MarkTen® e-vapor products with another brand's e-vapor
19 products will invalidate the warranty.” Nu Mark denies the remaining allegations of
20 Paragraph 72 of the Complaint.

21 73. Nu Mark denies the allegations of Paragraph 73 of the Complaint..

22 74. Nu Mark denies the allegations of Paragraph 74 of the Complaint.

23 75. Nu Mark denies the allegations of Paragraph 75 of the Complaint.

24 76. Nu Mark denies the allegations of Paragraph 76 of the Complaint.

25 77. Nu Mark denies the allegations of Paragraph 77 of the Complaint.

1 **ANSWER TO SECOND CLAIM FOR RELIEF**

2 78. Answering Paragraph 78 of the Complaint, Nu Mark incorporates its
3 responses in Paragraphs 1-77 by reference as if fully set forth herein.

4 79. Nu Mark admits that United States Patent No. 8.375,957 (the “’957
5 Patent”) was issued by the USPTO on February 19, 2013. Nu Mark denies that the
6 patent is valid. Nu Mark is without sufficient knowledge or information to form a
7 belief as to the remaining allegations of Paragraph 79 of the Complaint, and on that
8 basis denies them.

9 80. Nu Mark admits that it has had knowledge of the ‘957 patent. Nu Mark
10 denies the remaining allegations of Paragraph 80 of the Complaint.

11 81. Nu Mark admits that on May 11, 2015, Vapor Corp served a subpoena
12 identifying the ‘957 patent on Altria Group, Inc. Nu Mark denies the remaining
13 allegations of Paragraph 81 of the Complaint.

14 82. Nu Mark admits that Altria Group, Inc. filed a motion to quash a
15 subpoena served by Vapor Corp in the District Court for the Eastern District of
16 Virginia on May 26, 2015. Nu Mark denies the remaining allegations of Paragraph
17 82 of the Complaint.

18 83. Nu Mark admits that it is a subsidiary of Altria Group, Inc. and that it
19 has had knowledge of the ‘957 Patent since at least May 11, 2015. Nu Mark denies
20 the remaining allegations of Paragraph 83 of the Complaint.

21 84. Nu Mark is without sufficient knowledge or information to form a
22 belief as to the allegations of Paragraph 84 of the Complaint, and on that basis
23 denies them.

24 85. Nu Mark denies the allegations in Paragraph 85 of the Complaint.

25 86. Nu Mark denies the allegations in Paragraph 86 of the Complaint.

26 87. Nu Mark denies the allegations in Paragraph 87 of the Complaint.

27 88. Nu Mark denies the allegations in Paragraph 88 of the Complaint.
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1 89. Nu Mark denies the allegations in Paragraph 89 of the Complaint.

2 90. Nu Mark denies the allegations in Paragraph 90 of the Complaint.

3 **MarkTen**

4 91. Nu Mark denies the allegations of Paragraph 91 of the Complaint.

5 92. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the allegations of Paragraph 92.

9 93. Nu Mark admits that the MarkTen product includes a battery
10 component and a sensor component. Because the claims of the patent have yet to be
11 construed, Nu Mark is without sufficient knowledge or information to form a belief
12 as to whether the product meets the stated limitation “as recited in” the claims, and
13 on that basis denies the remaining allegations of Paragraph 93.

14 94. Nu Mark admits that the MarkTen product includes a threaded
15 component. Because the claims of the patent have yet to be construed, Nu Mark is
16 without sufficient knowledge or information to form a belief as to whether the
17 product meets the stated limitation “as recited in” the claims, and on that basis
18 denies the remaining allegations of Paragraph 94.

19 95. Because the claims of the patent have yet to be construed, Nu Mark is
20 without sufficient knowledge or information to form a belief as to whether the
21 product meets the stated limitation “as recited in” the claims, and on that basis
22 denies the allegations of Paragraph 95.

23 96. Nu Mark admits that the MarkTen product includes a housing.
24 Because the claims of the patent have yet to be construed, Nu Mark is without
25 sufficient knowledge or information to form a belief as to whether the product meets
26 the stated limitation “as recited in” the claims, and on that basis denies the
27 remaining allegations of Paragraph 96.

1 97. Nu Mark admits that the MarkTen product contains liquid. Because the
2 claims of the patent have yet to be construed, Nu Mark is without sufficient
3 knowledge or information to form a belief as to whether the product meets the stated
4 limitation “as recited in” the claims, and on that basis denies the remaining
5 allegations of Paragraph 97.

6 98. Nu Mark admits that the MarkTen product includes a threaded
7 component. Because the claims of the patent have yet to be construed, Nu Mark is
8 without sufficient knowledge or information to form a belief as to whether the
9 product meets the stated limitation “as recited in” the claims, and on that basis
10 denies the remaining allegations of Paragraph 98.

11 99. Nu Mark admits that the MarkTen product includes a heating
12 component. Because the claims of the patent have yet to be construed, Nu Mark is
13 without sufficient knowledge or information to form a belief as to whether the
14 product meets the stated limitation “as recited in” the claims, and on that basis
15 denies the remaining allegations of Paragraph 99.

16 100. Nu Mark denies the allegations of Paragraph 100 of the Complaint.

17 101. Nu Mark admits that the MarkTen product includes a sensor
18 component. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the remaining allegations of Paragraph 101.

22 102. Nu Mark denies the allegations of Paragraph 102 of the Complaint.

23 103. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the allegations of Paragraph 103.

27 104. Nu Mark denies the allegations of Paragraph 104 of the Complaint.
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1 105. Nu Mark admits that the MarkTen product includes absorbent material.
2 Because the claims of the patent have yet to be construed, Nu Mark is without
3 sufficient knowledge or information to form a belief as to whether the product meets
4 the stated limitation “as recited in” the claims, and on that basis denies the
5 remaining allegations of Paragraph 105.

6 106. Nu Mark denies the allegations of Paragraph 106 of the Complaint.

7 107. Nu Mark admits that the MarkTen product includes a heating
8 component. Because the claims of the patent have yet to be construed, Nu Mark is
9 without sufficient knowledge or information to form a belief as to whether the
10 product meets the stated limitation “as recited in” the claims, and on that basis
11 denies the remaining allegations of Paragraph 107.

12 108. Nu Mark denies the allegations of Paragraph 108 of the Complaint.

13 109. Because the claims of the patent have yet to be construed, Nu Mark is
14 without sufficient knowledge or information to form a belief as to whether the
15 product meets the stated limitation “as recited in” the claims, and on that basis
16 denies the allegations of Paragraph 109.

17 110. Nu Mark admits that the MarkTen product includes a housing.
18 Because the claims of the patent have yet to be construed, Nu Mark is without
19 sufficient knowledge or information to form a belief as to whether the product meets
20 the stated limitation “as recited in” the claims, and on that basis denies the
21 remaining allegations of Paragraph 110.

22 111. Nu Mark admits that the MarkTen product includes a battery
23 component. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 111.

1 112. Nu Mark admits that the MarkTen product includes a threaded
2 component. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 112.

6 113. Because the claims of the patent have yet to be construed, Nu Mark is
7 without sufficient knowledge or information to form a belief as to whether the
8 product meets the stated limitation “as recited in” the claims, and on that basis
9 denies the allegations of Paragraph 113.

10 114. Because the claims of the patent have yet to be construed, Nu Mark is
11 without sufficient knowledge or information to form a belief as to whether the
12 product meets the stated limitation “as recited in” the claims, and on that basis
13 denies the allegations of Paragraph 114.

14 115. Nu Mark admits that the MarkTen product includes a threaded
15 component. Because the claims of the patent have yet to be construed, Nu Mark is
16 without sufficient knowledge or information to form a belief as to whether the
17 product meets the stated limitation “as recited in” the claims, and on that basis
18 denies the remaining allegations of Paragraph 115.

19 116. Nu Mark admits that the MarkTen product includes a heating
20 component. Because the claims of the patent have yet to be construed, Nu Mark is
21 without sufficient knowledge or information to form a belief as to whether the
22 product meets the stated limitation “as recited in” the claims, and on that basis
23 denies the remaining allegations of Paragraph 116.

24 117. Nu Mark admits that the MarkTen product contains liquid. Because the
25 claims of the patent have yet to be construed, Nu Mark is without sufficient
26 knowledge or information to form a belief as to whether the product meets the stated
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1 limitation “as recited in” the claims, and on that basis denies the remaining
2 allegations of Paragraph 117.

3 118. Nu Mark denies the allegations of Paragraph 118 of the Complaint.

4 119. Nu Mark admits that the MarkTen product includes a heating
5 component. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the remaining allegations of Paragraph 119.

9 120. Nu Mark denies the allegations of Paragraph 120 of the Complaint.

10 121. Nu Mark admits that the MarkTen product includes a battery
11 component. Because the claims of the patent have yet to be construed, Nu Mark is
12 without sufficient knowledge or information to form a belief as to whether the
13 product meets the stated limitation “as recited in” the claims, and on that basis
14 denies the remaining allegations of Paragraph 121.

15 122. Nu Mark denies the allegations of Paragraph 122 of the Complaint.

16 123. Because the claims of the patent have yet to be construed, Nu Mark is
17 without sufficient knowledge or information to form a belief as to whether the
18 product meets the stated limitation “as recited in” the claims, and on that basis
19 denies the allegations of Paragraph 123.

20 124. Nu Mark denies the allegations of Paragraph 124 of the Complaint.

21 125. Nu Mark admits that the MarkTen product includes a passage for
22 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
23 without sufficient knowledge or information to form a belief as to whether the
24 product meets the stated limitation “as recited in” the claims, and on that basis
25 denies the remaining allegations of Paragraph 125.

26 126. Nu Mark denies the allegations of Paragraph 126 of the Complaint.
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1 127. Nu Mark admits that the MarkTen product connects to a USB charger.
2 Because the claims of the patent have yet to be construed, Nu Mark is without
3 sufficient knowledge or information to form a belief as to whether the product meets
4 the stated limitation “as recited in” the claims, and on that basis denies the
5 remaining allegations of Paragraph 127.

6 128. Nu Mark denies the allegations of Paragraph 128 of the Complaint.

7 129. Nu Mark admits that the MarkTen product includes a threaded
8 component. Because the claims of the patent have yet to be construed, Nu Mark is
9 without sufficient knowledge or information to form a belief as to whether the
10 product meets the stated limitation “as recited in” the claims, and on that basis
11 denies the remaining allegations of Paragraph 129.

12 130. Nu Mark denies the allegations of Paragraph 130 of the Complaint.

13 131. Because the claims of the patent have yet to be construed, Nu Mark is
14 without sufficient knowledge or information to form a belief as to whether the
15 product meets the stated limitation “as recited in” the claims, and on that basis
16 denies the allegations of Paragraph 131.

17 132. Nu Mark admits that the MarkTen product includes a battery
18 component and a sensor component. Because the claims of the patent have yet to be
19 construed, Nu Mark is without sufficient knowledge or information to form a belief
20 as to whether the product meets the stated limitation “as recited in” the claims, and
21 on that basis denies the remaining allegations of Paragraph 132.

22 133. Nu Mark admits that the MarkTen product includes a threaded
23 component. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 133.

1 134. Because the claims of the patent have yet to be construed, Nu Mark is
2 without sufficient knowledge or information to form a belief as to whether the
3 product meets the stated limitation “as recited in” the claims, and on that basis
4 denies the allegations of Paragraph 134.

5 135. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the allegations of Paragraph 135.

9 136. Nu Mark admits that the MarkTen product contains liquid. Because the
10 claims of the patent have yet to be construed, Nu Mark is without sufficient
11 knowledge or information to form a belief as to whether the product meets the stated
12 limitation “as recited in” the claims, and on that basis denies the remaining
13 allegations of Paragraph 136.

14 137. Nu Mark admits that the MarkTen product includes a threaded
15 component. Because the claims of the patent have yet to be construed, Nu Mark is
16 without sufficient knowledge or information to form a belief as to whether the
17 product meets the stated limitation “as recited in” the claims, and on that basis
18 denies the remaining allegations of Paragraph 137.

19 138. Nu Mark admits that the MarkTen product includes a heating
20 component. Because the claims of the patent have yet to be construed, Nu Mark is
21 without sufficient knowledge or information to form a belief as to whether the
22 product meets the stated limitation “as recited in” the claims, and on that basis
23 denies the remaining allegations of Paragraph 138.

24 **MarkTen XL**

25 139. Nu Mark denies the allegations of Paragraph 139 of the Complaint.

26 140. Because the claims of the patent have yet to be construed, Nu Mark is
27 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the allegations of Paragraph 140.

3 141. Nu Mark admits that the MarkTen XL product includes a battery
4 component and a sensor component. Because the claims of the patent have yet to be
5 construed, Nu Mark is without sufficient knowledge or information to form a belief
6 as to whether the product meets the stated limitation “as recited in” the claims, and
7 on that basis denies the remaining allegations of Paragraph 141.

8 142. Nu Mark admits that the MarkTen XL product includes a threaded
9 component. Because the claims of the patent have yet to be construed, Nu Mark is
10 without sufficient knowledge or information to form a belief as to whether the
11 product meets the stated limitation “as recited in” the claims, and on that basis
12 denies the remaining allegations of Paragraph 142.

13 143. Because the claims of the patent have yet to be construed, Nu Mark is
14 without sufficient knowledge or information to form a belief as to whether the
15 product meets the stated limitation “as recited in” the claims, and on that basis
16 denies the allegations of Paragraph 143.

17 144. Nu Mark admits that the MarkTen XL product includes a housing.
18 Because the claims of the patent have yet to be construed, Nu Mark is without
19 sufficient knowledge or information to form a belief as to whether the product meets
20 the stated limitation “as recited in” the claims, and on that basis denies the
21 remaining allegations of Paragraph 144.

22 145. Nu Mark admits that the MarkTen XL product contains liquid.
23 Because the claims of the patent have yet to be construed, Nu Mark is without
24 sufficient knowledge or information to form a belief as to whether the product meets
25 the stated limitation “as recited in” the claims, and on that basis denies the
26 remaining allegations of Paragraph 145.

1 146. Nu Mark admits that the MarkTen XL product includes a threaded
2 component. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 146.

6 147. Nu Mark admits that the MarkTen XL product includes a heating
7 component. Because the claims of the patent have yet to be construed, Nu Mark is
8 without sufficient knowledge or information to form a belief as to whether the
9 product meets the stated limitation “as recited in” the claims, and on that basis
10 denies the remaining allegations of Paragraph 147.

11 148. Nu Mark denies the allegations of Paragraph 148 of the Complaint.

12 149. Because the claims of the patent have yet to be construed, Nu Mark is
13 without sufficient knowledge or information to form a belief as to whether the
14 product meets the stated limitation “as recited in” the claims, and on that basis
15 denies the allegations of Paragraph 149.

16 150. Nu Mark denies the allegations of Paragraph 150 of the Complaint.

17 151. Nu Mark admits that the MarkTen XL product includes a sensor
18 component. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the remaining allegations of Paragraph 151.

22 152. Nu Mark denies the allegations of Paragraph 152 of the Complaint.

23 153. Nu Mark admits that the MarkTen XL product includes absorbent
24 material. Because the claims of the patent have yet to be construed, Nu Mark is
25 without sufficient knowledge or information to form a belief as to whether the
26 product meets the stated limitation “as recited in” the claims, and on that basis
27 denies the remaining allegations of Paragraph 153.

1 154. Nu Mark denies the allegations of Paragraph 154 of the Complaint.

2 155. Nu Mark admits that the MarkTen XL product includes a heating
3 component. Because the claims of the patent have yet to be construed, Nu Mark is
4 without sufficient knowledge or information to form a belief as to whether the
5 product meets the stated limitation “as recited in” the claims, and on that basis
6 denies the remaining allegations of Paragraph 155.

7 156. Nu Mark denies the allegations of Paragraph 156 of the Complaint.

8 157. Because the claims of the patent have yet to be construed, Nu Mark is
9 without sufficient knowledge or information to form a belief as to whether the
10 product meets the stated limitation “as recited in” the claims, and on that basis
11 denies the allegations of Paragraph 157.

12 158. Nu Mark admits that the MarkTen XL product includes a battery
13 component. Because the claims of the patent have yet to be construed, Nu Mark is
14 without sufficient knowledge or information to form a belief as to whether the
15 product meets the stated limitation “as recited in” the claims, and on that basis
16 denies the remaining allegations of Paragraph 158.

17 159. Nu Mark admits that the MarkTen XL product includes a battery
18 component. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the remaining allegations of Paragraph 159.

22 160. Nu Mark admits that the MarkTen XL product includes a threaded
23 component. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 160.

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1 161. Because the claims of the patent have yet to be construed, Nu Mark is
2 without sufficient knowledge or information to form a belief as to whether the
3 product meets the stated limitation “as recited in” the claims, and on that basis
4 denies the allegations of Paragraph 161.

5 162. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the allegations of Paragraph 162.

9 163. Nu Mark admits that the MarkTen XL product includes a threaded
10 component. Because the claims of the patent have yet to be construed, Nu Mark is
11 without sufficient knowledge or information to form a belief as to whether the
12 product meets the stated limitation “as recited in” the claims, and on that basis
13 denies the remaining allegations of Paragraph 163.

14 164. Nu Mark admits that the MarkTen XL product includes a heating
15 component. Because the claims of the patent have yet to be construed, Nu Mark is
16 without sufficient knowledge or information to form a belief as to whether the
17 product meets the stated limitation “as recited in” the claims, and on that basis
18 denies the remaining allegations of Paragraph 164.

19 165. Nu Mark admits that the MarkTen XL product contains liquid.
20 Because the claims of the patent have yet to be construed, Nu Mark is without
21 sufficient knowledge or information to form a belief as to whether the product meets
22 the stated limitation “as recited in” the claims, and on that basis denies the
23 remaining allegations of Paragraph 165.

24 166. Nu Mark denies the allegations of Paragraph 166 of the Complaint.

25 167. Nu Mark admits that the MarkTen XL product includes a heating
26 component. Because the claims of the patent have yet to be construed, Nu Mark is
27 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 167.

3 168. Nu Mark denies the allegations of Paragraph 168 of the Complaint.

4 169. Nu Mark admits that the MarkTen XL product includes a threaded
5 component. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the remaining allegations of Paragraph 169.

9 170. Nu Mark denies the allegations of Paragraph 170 of the Complaint.

10 171. Nu Mark admits that the MarkTen XL product includes a battery
11 component. Because the claims of the patent have yet to be construed, Nu Mark is
12 without sufficient knowledge or information to form a belief as to whether the
13 product meets the stated limitation “as recited in” the claims, and on that basis
14 denies the remaining allegations of Paragraph 171.

15 172. Nu Mark denies the allegations of Paragraph 172 of the Complaint.

16 173. Nu Mark admits that the MarkTen XL product connects to a USB
17 charger. Because the claims of the patent have yet to be construed, Nu Mark is
18 without sufficient knowledge or information to form a belief as to whether the
19 product meets the stated limitation “as recited in” the claims, and on that basis
20 denies the remaining allegations of Paragraph 173.

21 174. Nu Mark denies the allegations of Paragraph 174 of the Complaint.

22 175. Nu Mark admits that the MarkTen XL product includes a threaded
23 component. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 175.

27 176. Nu Mark denies the allegations of Paragraph 176 of the Complaint.
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1 177. Because the claims of the patent have yet to be construed, Nu Mark is
2 without sufficient knowledge or information to form a belief as to whether the
3 product meets the stated limitation “as recited in” the claims, and on that basis
4 denies the allegations of Paragraph 177.

5 178. Nu Mark admits that the MarkTen XL product includes a battery
6 component. Because the claims of the patent have yet to be construed, Nu Mark is
7 without sufficient knowledge or information to form a belief as to whether the
8 product meets the stated limitation “as recited in” the claims, and on that basis
9 denies the remaining allegations of Paragraph 178.

10 179. Nu Mark admits that the MarkTen XL product includes a threaded
11 component. Because the claims of the patent have yet to be construed, Nu Mark is
12 without sufficient knowledge or information to form a belief as to whether the
13 product meets the stated limitation “as recited in” the claims, and on that basis
14 denies the remaining allegations of Paragraph 179.

15 180. Because the claims of the patent have yet to be construed, Nu Mark is
16 without sufficient knowledge or information to form a belief as to whether the
17 product meets the stated limitation “as recited in” the claims, and on that basis
18 denies the allegations of Paragraph 180.

19 181. Because the claims of the patent have yet to be construed, Nu Mark is
20 without sufficient knowledge or information to form a belief as to whether the
21 product meets the stated limitation “as recited in” the claims, and on that basis
22 denies the allegations of Paragraph 181.

23 182. Nu Mark admits that the MarkTen XL product contains liquid.
24 Because the claims of the patent have yet to be construed, Nu Mark is without
25 sufficient knowledge or information to form a belief as to whether the product meets
26 the stated limitation “as recited in” the claims, and on that basis denies the
27 remaining allegations of Paragraph 182.
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1 183. Nu Mark admits that the MarkTen XL product includes a threaded
2 component. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 183.

6 184. Nu Mark admits that the MarkTen XL product includes a heating
7 component. Because the claims of the patent have yet to be construed, Nu Mark is
8 without sufficient knowledge or information to form a belief as to whether the
9 product meets the stated limitation “as recited in” the claims, and on that basis
10 denies the remaining allegations of Paragraph 184.

11 **GreenSmoke**

12 185. Nu Mark denies the allegations of Paragraph 185 of the Complaint.

13 186. Because the claims of the patent have yet to be construed, Nu Mark is
14 without sufficient knowledge or information to form a belief as to whether the
15 product meets the stated limitation “as recited in” the claims, and on that basis
16 denies the allegations of Paragraph 186.

17 187. Nu Mark admits that the GreenSmoke product includes a battery
18 component. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the remaining allegations of Paragraph 187.

22 188. Nu Mark admits that the GreenSmoke product includes a threaded
23 component. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 188.

1 189. Because the claims of the patent have yet to be construed, Nu Mark is
2 without sufficient knowledge or information to form a belief as to whether the
3 product meets the stated limitation “as recited in” the claims, and on that basis
4 denies the allegations of Paragraph 189.

5 190. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the allegations of Paragraph 190.

9 191. Nu Mark admits that the GreenSmoke product contains liquid. Because
10 the claims of the patent have yet to be construed, Nu Mark is without sufficient
11 knowledge or information to form a belief as to whether the product meets the stated
12 limitation “as recited in” the claims, and on that basis denies the remaining
13 allegations of Paragraph 191.

14 192. Nu Mark admits that the GreenSmoke product includes a threaded
15 component. Because the claims of the patent have yet to be construed, Nu Mark is
16 without sufficient knowledge or information to form a belief as to whether the
17 product meets the stated limitation “as recited in” the claims, and on that basis
18 denies the remaining allegations of Paragraph 192.

19 193. Nu Mark admits that the GreenSmoke product includes a heating
20 component. Because the claims of the patent have yet to be construed, Nu Mark is
21 without sufficient knowledge or information to form a belief as to whether the
22 product meets the stated limitation “as recited in” the claims, and on that basis
23 denies the remaining allegations of Paragraph 193.

24 194. Nu Mark denies the allegations of Paragraph 194 of the Complaint.

25 195. Nu Mark admits that the GreenSmoke product includes a threaded
26 component. Because the claims of the patent have yet to be construed, Nu Mark is
27 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 195.

3 196. Nu Mark denies the allegations of Paragraph 196 of the Complaint.

4 197. Nu Mark admits that the GreenSmoke product includes a sensor
5 component. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the remaining allegations of Paragraph 197.

9 198. Nu Mark denies the allegations of Paragraph 198 of the Complaint.

10 199. Nu Mark admits that the GreenSmoke product includes absorbent
11 material. Because the claims of the patent have yet to be construed, Nu Mark is
12 without sufficient knowledge or information to form a belief as to whether the
13 product meets the stated limitation “as recited in” the claims, and on that basis
14 denies the remaining allegations of Paragraph 199.

15 200. Nu Mark denies the allegations of Paragraph 200 of the Complaint.

16 201. Nu Mark admits that the GreenSmoke product includes a heating
17 component. Because the claims of the patent have yet to be construed, Nu Mark is
18 without sufficient knowledge or information to form a belief as to whether the
19 product meets the stated limitation “as recited in” the claims, and on that basis
20 denies the remaining allegations of Paragraph 201.

21 202. Nu Mark denies the allegations of Paragraph 202 of the Complaint.

22 203. Because the claims of the patent have yet to be construed, Nu Mark is
23 without sufficient knowledge or information to form a belief as to whether the
24 product meets the stated limitation “as recited in” the claims, and on that basis
25 denies the allegations of Paragraph 203.

26 204. Nu Mark admits that the GreenSmoke product includes a battery
27 component. Because the claims of the patent have yet to be construed, Nu Mark is
28

1 without sufficient knowledge or information to form a belief as to whether the
2 product meets the stated limitation “as recited in” the claims, and on that basis
3 denies the remaining allegations of Paragraph 204.

4 205. Nu Mark admits that the GreenSmoke product includes a battery
5 component. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the remaining allegations of Paragraph 205.

9 206. Nu Mark admits that the GreenSmoke product includes a threaded
10 component. Because the claims of the patent have yet to be construed, Nu Mark is
11 without sufficient knowledge or information to form a belief as to whether the
12 product meets the stated limitation “as recited in” the claims, and on that basis
13 denies the remaining allegations of Paragraph 206.

14 207. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the allegations of Paragraph 207.

18 208. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the allegations of Paragraph 208.

22 209. Nu Mark admits that the GreenSmoke product includes a threaded
23 component. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 209.

1 210. Because the claims of the patent have yet to be construed, Nu Mark is
2 without sufficient knowledge or information to form a belief as to whether the
3 product meets the stated limitation “as recited in” the claims, and on that basis
4 denies the allegations of Paragraph 210.

5 211. Nu Mark admits that the GreenSmoke product contains liquid. Because
6 the claims of the patent have yet to be construed, Nu Mark is without sufficient
7 knowledge or information to form a belief as to whether the product meets the stated
8 limitation “as recited in” the claims, and on that basis denies the remaining
9 allegations of Paragraph 211.

10 212. Nu Mark denies the allegations of Paragraph 212 of the Complaint.

11 213. Nu Mark admits that the GreenSmoke product includes a heating
12 component. Because the claims of the patent have yet to be construed, Nu Mark is
13 without sufficient knowledge or information to form a belief as to whether the
14 product meets the stated limitation “as recited in” the claims, and on that basis
15 denies the remaining allegations of Paragraph 213.

16 214. Nu Mark denies the allegations of Paragraph 214 of the Complaint.

17 215. Nu Mark admits that the GreenSmoke product includes a threaded
18 component. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the remaining allegations of Paragraph 215.

22 216. Nu Mark denies the allegations of Paragraph 216 of the Complaint.

23 217. Nu Mark admits that the GreenSmoke product includes a battery
24 component. Because the claims of the patent have yet to be construed, Nu Mark is
25 without sufficient knowledge or information to form a belief as to whether the
26 product meets the stated limitation “as recited in” the claims, and on that basis
27 denies the remaining allegations of Paragraph 217.

1 218. Nu Mark denies the allegations of Paragraph 218 of the Complaint.

2 219. Nu Mark admits that the GreenSmoke product connects to a USB
3 charger. Because the claims of the patent have yet to be construed, Nu Mark is
4 without sufficient knowledge or information to form a belief as to whether the
5 product meets the stated limitation “as recited in” the claims, and on that basis
6 denies the remaining allegations of Paragraph 219.

7 220. Nu Mark denies the allegations of Paragraph 220 of the Complaint.

8 221. Nu Mark admits that the GreenSmoke product includes a threaded
9 component. Because the claims of the patent have yet to be construed, Nu Mark is
10 without sufficient knowledge or information to form a belief as to whether the
11 product meets the stated limitation “as recited in” the claims, and on that basis
12 denies the remaining allegations of Paragraph 221.

13 222. Nu Mark denies the allegations of Paragraph 222 of the Complaint.

14 223. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the allegations of Paragraph 223.

18 224. Nu Mark admits that the GreenSmoke product includes a battery
19 component. Because the claims of the patent have yet to be construed, Nu Mark is
20 without sufficient knowledge or information to form a belief as to whether the
21 product meets the stated limitation “as recited in” the claims, and on that basis
22 denies the remaining allegations of Paragraph 224.

23 225. Nu Mark admits that the GreenSmoke product includes a threaded
24 component. Because the claims of the patent have yet to be construed, Nu Mark is
25 without sufficient knowledge or information to form a belief as to whether the
26 product meets the stated limitation “as recited in” the claims, and on that basis
27 denies the remaining allegations of Paragraph 225.

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1 226. Because the claims of the patent have yet to be construed, Nu Mark is
2 without sufficient knowledge or information to form a belief as to whether the
3 product meets the stated limitation “as recited in” the claims, and on that basis
4 denies the allegations of Paragraph 226.

5 227. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the allegations of Paragraph 227.

9 228. Nu Mark admits that the GreenSmoke product contains liquid. Because
10 the claims of the patent have yet to be construed, Nu Mark is without sufficient
11 knowledge or information to form a belief as to whether the product meets the stated
12 limitation “as recited in” the claims, and on that basis denies the remaining
13 allegations of Paragraph 228.

14 229. Nu Mark admits that the GreenSmoke product includes a threaded
15 component. Because the claims of the patent have yet to be construed, Nu Mark is
16 without sufficient knowledge or information to form a belief as to whether the
17 product meets the stated limitation “as recited in” the claims, and on that basis
18 denies the remaining allegations of Paragraph 229.

19 230. Nu Mark admits that the GreenSmoke product includes a heating
20 component. Because the claims of the patent have yet to be construed, Nu Mark is
21 without sufficient knowledge or information to form a belief as to whether the
22 product meets the stated limitation “as recited in” the claims, and on that basis
23 denies the remaining allegations of Paragraph 230.

24 231. Nu Mark denies the allegations of Paragraph 231 of the Complaint.

25 232. Nu Mark denies the allegations of Paragraph 232 of the Complaint.

26 233. Nu Mark denies the allegations of Paragraph 233 of the Complaint.

27 234. Nu Mark admits the allegations of Paragraph 234 of the Complaint.
28

1 235. Nu Mark admits that Exhibit P to the Complaint states: “MarkTen® e-
2 vapor products are designed to work together, in order to give vapers the best
3 possible vaping experience. Using MarkTen® e-vapor products with non-
4 MarkTen® e-vapor products may be unsafe, and is not advised.” Nu Mark denies
5 the remaining allegations of Paragraph 235 of the Complaint.

6 236. Nu Mark admits that Exhibit P to the Complaint states: “MarkTen® e-
7 vapor products are designed to work together, in order to give vapers the best
8 possible vaping experience. Using MarkTen® e-vapor products with non-
9 MarkTen® e-vapor products may be unsafe, and is not advised.” Nu Mark denies
10 the remaining allegations of Paragraph 236 of the Complaint.

11 237. Nu Mark admits that Exhibit P to the Complaint states: “Customers
12 should note that using MarkTen® e-vapor products with another brand's e-vapor
13 products will invalidate the warranty.” Nu Mark denies the remaining allegations of
14 Paragraph 237 of the Complaint.

15 238. Nu Mark denies the allegations of Paragraph 238 of the Complaint..

16 239. Nu Mark denies the allegations of Paragraph 239 of the Complaint.

17 240. Nu Mark denies the allegations of Paragraph 240 of the Complaint.

18 241. Nu Mark denies the allegations of Paragraph 241 of the Complaint.

19 242. Nu Mark denies the allegations of Paragraph 242 of the Complaint.

20 **ANSWER TO THIRD CLAIM FOR RELIEF**

21 243. Answering Paragraph 243 of the Complaint, Nu Mark incorporates its
22 responses in Paragraphs 1-242 by reference as if fully set forth herein.

23 244. Nu Mark admits that United States Patent No. 8,393,331 (the “331
24 Patent”) was issued by the USPTO on March 12, 2013. Nu Mark denies that the
25 patent is valid. Nu Mark is without sufficient knowledge or information to form a
26 belief as to the remaining allegations of Paragraph 244 of the Complaint, and on that
27 basis denies them.
28

1 245. Nu Mark admits that it has had knowledge of the ‘331 patent. Nu Mark
2 denies the remaining allegations of Paragraph 245 of the Complaint.

3 246. Nu Mark admits that on May 11, 2015, Vapor Corp served a subpoena
4 identifying the ‘331 patent on Altria Group, Inc. Nu Mark denies the remaining
5 allegations of Paragraph 246 of the Complaint.

6 247. Nu Mark admits that Altria Group, Inc. filed a motion to quash a
7 subpoena served by Vapor Corp in the District Court for the Eastern District of
8 Virginia on May 26, 2015. Nu Mark denies the remaining allegations of Paragraph
9 247 of the Complaint.

10 248. Nu Mark admits that it is a subsidiary of Altria Group, Inc. and that it
11 has had knowledge of the ‘331 Patent since at least May 11, 2015. Nu Mark denies
12 the remaining allegations of Paragraph 248 of the Complaint.

13 249. Nu Mark is without sufficient knowledge or information to form a
14 belief as to the allegations of Paragraph 249 of the Complaint, and on that basis
15 denies them.

16 250. Nu Mark denies the allegations in Paragraph 250 of the Complaint.

17 251. Nu Mark denies the allegations in Paragraph 251 of the Complaint.

18 252. Nu Mark denies the allegations in Paragraph 252 of the Complaint.

19 253. Nu Mark denies the allegations in Paragraph 253 of the Complaint.

20 **MarkTen**

21 254. Nu Mark denies the allegations of Paragraph 254 of the Complaint.

22 255. Because the claims of the patent have yet to be construed, Nu Mark is
23 without sufficient knowledge or information to form a belief as to whether the
24 product meets the stated limitation “as recited in” the claims, and on that basis
25 denies the allegations of Paragraph 255.

26 256. Nu Mark admits that the MarkTen product includes a housing.
27 Because the claims of the patent have yet to be construed, Nu Mark is without
28

1 sufficient knowledge or information to form a belief as to whether the product meets
2 the stated limitation “as recited in” the claims, and on that basis denies the
3 remaining allegations of Paragraph 256.

4 257. Because the claims of the patent have yet to be construed, Nu Mark is
5 without sufficient knowledge or information to form a belief as to whether the
6 product meets the stated limitation “as recited in” the claims, and on that basis
7 denies the allegations of Paragraph 257.

8 258. Nu Mark admits that the MarkTen product includes an LED
9 component. Because the claims of the patent have yet to be construed, Nu Mark is
10 without sufficient knowledge or information to form a belief as to whether the
11 product meets the stated limitation “as recited in” the claims, and on that basis
12 denies the remaining allegations of Paragraph 258.

13 259. Nu Mark admits that the MarkTen product includes a passage for
14 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the remaining allegations of Paragraph 259.

18 260. Nu Mark admits that the MarkTen product includes a battery
19 component. Because the claims of the patent have yet to be construed, Nu Mark is
20 without sufficient knowledge or information to form a belief as to whether the
21 product meets the stated limitation “as recited in” the claims, and on that basis
22 denies the remaining allegations of Paragraph 260.

23 261. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the allegations of Paragraph 261.

1 262. Nu Mark admits that the MarkTen product includes a sensor
2 component. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 262.

6 263. Because the claims of the patent have yet to be construed, Nu Mark is
7 without sufficient knowledge or information to form a belief as to whether the
8 product meets the stated limitation “as recited in” the claims, and on that basis
9 denies the allegations of Paragraph 263.

10 264. Nu Mark admits that the MarkTen product includes a passage for
11 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
12 without sufficient knowledge or information to form a belief as to whether the
13 product meets the stated limitation “as recited in” the claims, and on that basis
14 denies the remaining allegations of Paragraph 264.

15 265. Because the claims of the patent have yet to be construed, Nu Mark is
16 without sufficient knowledge or information to form a belief as to whether the
17 product meets the stated limitation “as recited in” the claims, and on that basis
18 denies the allegations of Paragraph 265.

19 266. Nu Mark admits that the MarkTen product contains liquid. Because the
20 claims of the patent have yet to be construed, Nu Mark is without sufficient
21 knowledge or information to form a belief as to whether the product meets the stated
22 limitation “as recited in” the claims, and on that basis denies the remaining
23 allegations of Paragraph 266.

24 267. Nu Mark admits that the MarkTen product includes a passage for
25 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
26 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 267.

3 268. Nu Mark admits that the MarkTen product includes a heating
4 component. Because the claims of the patent have yet to be construed, Nu Mark is
5 without sufficient knowledge or information to form a belief as to whether the
6 product meets the stated limitation “as recited in” the claims, and on that basis
7 denies the remaining allegations of Paragraph 268.

8 269. Nu Mark denies the allegations of Paragraph 269 of the Complaint.

9 270. Because the claims of the patent have yet to be construed, Nu Mark is
10 without sufficient knowledge or information to form a belief as to whether the
11 product meets the stated limitation “as recited in” the claims, and on that basis
12 denies the allegations of Paragraph 270.

13 271. Nu Mark admits that the MarkTen product includes a housing.
14 Because the claims of the patent have yet to be construed, Nu Mark is without
15 sufficient knowledge or information to form a belief as to whether the product meets
16 the stated limitation “as recited in” the claims, and on that basis denies the
17 remaining allegations of Paragraph 271.

18 272. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the allegations of Paragraph 272.

22 273. Nu Mark admits that the MarkTen product includes an LED
23 component. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 273.

1 274. Nu Mark admits that the MarkTen product includes a passage for
2 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 274.

6 275. Nu Mark admits that the MarkTen product includes a battery
7 component and a sensor component. Because the claims of the patent have yet to be
8 construed, Nu Mark is without sufficient knowledge or information to form a belief
9 as to whether the product meets the stated limitation “as recited in” the claims, and
10 on that basis denies the remaining allegations of Paragraph 275.

11 276. Nu Mark admits that the MarkTen product contains liquid and includes
12 a heating component. Because the claims of the patent have yet to be construed, Nu
13 Mark is without sufficient knowledge or information to form a belief as to whether
14 the product meets the stated limitation “as recited in” the claims, and on that basis
15 denies the remaining allegations of Paragraph 276.

16 277. Nu Mark admits that the MarkTen product includes a passage for
17 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
18 without sufficient knowledge or information to form a belief as to whether the
19 product meets the stated limitation “as recited in” the claims, and on that basis
20 denies the remaining allegations of Paragraph 277.

21 278. Nu Mark denies the allegations of Paragraph 278 of the Complaint.

22 279. Nu Mark admits that the MarkTen product includes a heating
23 component. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 279.

27 280. Nu Mark denies the allegations of Paragraph 280 of the Complaint.
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1 281. Nu Mark admits that the MarkTen product contains liquid. Because the
2 claims of the patent have yet to be construed, Nu Mark is without sufficient
3 knowledge or information to form a belief as to whether the product meets the stated
4 limitation “as recited in” the claims, and on that basis denies the remaining
5 allegations of Paragraph 281.

6 **MarkTen XL**

7 282. Nu Mark denies the allegations of Paragraph 282 of the Complaint.

8 283. Because the claims of the patent have yet to be construed, Nu Mark is
9 without sufficient knowledge or information to form a belief as to whether the
10 product meets the stated limitation “as recited in” the claims, and on that basis
11 denies the allegations of Paragraph 283.

12 284. Nu Mark admits that the MarkTen XL product includes a housing.
13 Because the claims of the patent have yet to be construed, Nu Mark is without
14 sufficient knowledge or information to form a belief as to whether the product meets
15 the stated limitation “as recited in” the claims, and on that basis denies the
16 remaining allegations of Paragraph 284.

17 285. Because the claims of the patent have yet to be construed, Nu Mark is
18 without sufficient knowledge or information to form a belief as to whether the
19 product meets the stated limitation “as recited in” the claims, and on that basis
20 denies the allegations of Paragraph 285.

21 286. Nu Mark admits that the MarkTen XL product includes an LED
22 component. Because the claims of the patent have yet to be construed, Nu Mark is
23 without sufficient knowledge or information to form a belief as to whether the
24 product meets the stated limitation “as recited in” the claims, and on that basis
25 denies the remaining allegations of Paragraph 286.

26 287. Nu Mark admits that the MarkTen XL product includes a passage for
27 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
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1 without sufficient knowledge or information to form a belief as to whether the
2 product meets the stated limitation “as recited in” the claims, and on that basis
3 denies the remaining allegations of Paragraph 287.

4 288. Nu Mark admits that the MarkTen XL product includes a battery
5 component. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the remaining allegations of Paragraph 288.

9 289. Because the claims of the patent have yet to be construed, Nu Mark is
10 without sufficient knowledge or information to form a belief as to whether the
11 product meets the stated limitation “as recited in” the claims, and on that basis
12 denies the allegations of Paragraph 289.

13 290. Nu Mark admits that the MarkTen XL product includes a sensor
14 component. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the remaining allegations of Paragraph 290.

18 291. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the allegations of Paragraph 291.

22 292. Nu Mark admits that the MarkTen XL product includes a passage for
23 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 292.

1 293. Because the claims of the patent have yet to be construed, Nu Mark is
2 without sufficient knowledge or information to form a belief as to whether the
3 product meets the stated limitation “as recited in” the claims, and on that basis
4 denies the allegations of Paragraph 293.

5 294. Nu Mark admits that the MarkTen XL product contains liquid.
6 Because the claims of the patent have yet to be construed, Nu Mark is without
7 sufficient knowledge or information to form a belief as to whether the product meets
8 the stated limitation “as recited in” the claims, and on that basis denies the
9 remaining allegations of Paragraph 294.

10 295. Nu Mark admits that the MarkTen XL product includes a passage for
11 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
12 without sufficient knowledge or information to form a belief as to whether the
13 product meets the stated limitation “as recited in” the claims, and on that basis
14 denies the remaining allegations of Paragraph 295.

15 296. Nu Mark admits that the MarkTen XL product includes a heating
16 component. Because the claims of the patent have yet to be construed, Nu Mark is
17 without sufficient knowledge or information to form a belief as to whether the
18 product meets the stated limitation “as recited in” the claims, and on that basis
19 denies the remaining allegations of Paragraph 296.

20 297. Nu Mark denies the allegations of Paragraph 297 of the Complaint.

21 298. Because the claims of the patent have yet to be construed, Nu Mark is
22 without sufficient knowledge or information to form a belief as to whether the
23 product meets the stated limitation “as recited in” the claims, and on that basis
24 denies the allegations of Paragraph 298.

25 299. Nu Mark admits that the MarkTen XL product includes a housing.
26 Because the claims of the patent have yet to be construed, Nu Mark is without
27 sufficient knowledge or information to form a belief as to whether the product meets
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1 the stated limitation “as recited in” the claims, and on that basis denies the
2 remaining allegations of Paragraph 299.

3 300. Because the claims of the patent have yet to be construed, Nu Mark is
4 without sufficient knowledge or information to form a belief as to whether the
5 product meets the stated limitation “as recited in” the claims, and on that basis
6 denies the allegations of Paragraph 300.

7 301. Nu Mark admits that the MarkTen XL product includes an LED
8 component. Because the claims of the patent have yet to be construed, Nu Mark is
9 without sufficient knowledge or information to form a belief as to whether the
10 product meets the stated limitation “as recited in” the claims, and on that basis
11 denies the remaining allegations of Paragraph 301.

12 302. Nu Mark admits that the MarkTen XL product includes a passage for
13 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
14 without sufficient knowledge or information to form a belief as to whether the
15 product meets the stated limitation “as recited in” the claims, and on that basis
16 denies the remaining allegations of Paragraph 302.

17 303. Nu Mark admits that the MarkTen XL product includes a battery
18 component and a sensor component. Because the claims of the patent have yet to be
19 construed, Nu Mark is without sufficient knowledge or information to form a belief
20 as to whether the product meets the stated limitation “as recited in” the claims, and
21 on that basis denies the remaining allegations of Paragraph 303.

22 304. Nu Mark admits that the MarkTen XL product contains liquid and
23 includes a heating component. Because the claims of the patent have yet to be
24 construed, Nu Mark is without sufficient knowledge or information to form a belief
25 as to whether the product meets the stated limitation “as recited in” the claims, and
26 on that basis denies the remaining allegations of Paragraph 304.

1 305. Nu Mark admits that the MarkTen XL product includes a passage for
2 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 305.

6 306. Nu Mark denies the allegations of Paragraph 306 of the Complaint.

7 307. Nu Mark admits that the MarkTen XL product includes a heating
8 component. Because the claims of the patent have yet to be construed, Nu Mark is
9 without sufficient knowledge or information to form a belief as to whether the
10 product meets the stated limitation “as recited in” the claims, and on that basis
11 denies the remaining allegations of Paragraph 307.

12 308. Nu Mark denies the allegations of Paragraph 308 of the Complaint.

13 309. Nu Mark admits that the MarkTen XL product contains liquid.
14 Because the claims of the patent have yet to be construed, Nu Mark is without
15 sufficient knowledge or information to form a belief as to whether the product meets
16 the stated limitation “as recited in” the claims, and on that basis denies the
17 remaining allegations of Paragraph 309.

18 **GreenSmoke**

19 310. Nu Mark denies the allegations of Paragraph 310 of the Complaint.

20 311. Because the claims of the patent have yet to be construed, Nu Mark is
21 without sufficient knowledge or information to form a belief as to whether the
22 product meets the stated limitation “as recited in” the claims, and on that basis
23 denies the allegations of Paragraph 311.

24 312. Nu Mark admits that the GreenSmoke product includes a housing.
25 Because the claims of the patent have yet to be construed, Nu Mark is without
26 sufficient knowledge or information to form a belief as to whether the product meets
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1 the stated limitation “as recited in” the claims, and on that basis denies the
2 remaining allegations of Paragraph 312.

3 313. Because the claims of the patent have yet to be construed, Nu Mark is
4 without sufficient knowledge or information to form a belief as to whether the
5 product meets the stated limitation “as recited in” the claims, and on that basis
6 denies the allegations of Paragraph 313.

7 314. Nu Mark admits that the GreenSmoke product includes an LED
8 component. Because the claims of the patent have yet to be construed, Nu Mark is
9 without sufficient knowledge or information to form a belief as to whether the
10 product meets the stated limitation “as recited in” the claims, and on that basis
11 denies the remaining allegations of Paragraph 314.

12 315. Nu Mark admits that the GreenSmoke product includes a passage for
13 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
14 without sufficient knowledge or information to form a belief as to whether the
15 product meets the stated limitation “as recited in” the claims, and on that basis
16 denies the remaining allegations of Paragraph 315.

17 316. Nu Mark admits that the GreenSmoke product includes a battery
18 component. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the remaining allegations of Paragraph 316.

22 317. Because the claims of the patent have yet to be construed, Nu Mark is
23 without sufficient knowledge or information to form a belief as to whether the
24 product meets the stated limitation “as recited in” the claims, and on that basis
25 denies the allegations of Paragraph 317.

26 318. Nu Mark admits that the GreenSmoke product includes a sensor
27 component. Because the claims of the patent have yet to be construed, Nu Mark is
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1 without sufficient knowledge or information to form a belief as to whether the
2 product meets the stated limitation “as recited in” the claims, and on that basis
3 denies the remaining allegations of Paragraph 318.

4 319. Because the claims of the patent have yet to be construed, Nu Mark is
5 without sufficient knowledge or information to form a belief as to whether the
6 product meets the stated limitation “as recited in” the claims, and on that basis
7 denies the allegations of Paragraph 319.

8 320. Nu Mark admits that the GreenSmoke product includes a passage for
9 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
10 without sufficient knowledge or information to form a belief as to whether the
11 product meets the stated limitation “as recited in” the claims, and on that basis
12 denies the remaining allegations of Paragraph 320.

13 321. Because the claims of the patent have yet to be construed, Nu Mark is
14 without sufficient knowledge or information to form a belief as to whether the
15 product meets the stated limitation “as recited in” the claims, and on that basis
16 denies the allegations of Paragraph 321.

17 322. Nu Mark admits that the GreenSmoke product contains liquid. Because
18 the claims of the patent have yet to be construed, Nu Mark is without sufficient
19 knowledge or information to form a belief as to whether the product meets the stated
20 limitation “as recited in” the claims, and on that basis denies the remaining
21 allegations of Paragraph 322.

22 323. Nu Mark admits that the GreenSmoke product includes a passage for
23 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 323.

1 324. Nu Mark admits that the GreenSmoke product includes a heating
2 component. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 324.

6 325. Nu Mark denies the allegations of Paragraph 325 of the Complaint.

7 326. Because the claims of the patent have yet to be construed, Nu Mark is
8 without sufficient knowledge or information to form a belief as to whether the
9 product meets the stated limitation “as recited in” the claims, and on that basis
10 denies the allegations of Paragraph 326.

11 327. Nu Mark admits that the GreenSmoke product includes a housing.
12 Because the claims of the patent have yet to be construed, Nu Mark is without
13 sufficient knowledge or information to form a belief as to whether the product meets
14 the stated limitation “as recited in” the claims, and on that basis denies the
15 remaining allegations of Paragraph 327.

16 328. Because the claims of the patent have yet to be construed, Nu Mark is
17 without sufficient knowledge or information to form a belief as to whether the
18 product meets the stated limitation “as recited in” the claims, and on that basis
19 denies the allegations of Paragraph 328.

20 329. Nu Mark admits that the GreenSmoke product includes an LED
21 component. Because the claims of the patent have yet to be construed, Nu Mark is
22 without sufficient knowledge or information to form a belief as to whether the
23 product meets the stated limitation “as recited in” the claims, and on that basis
24 denies the remaining allegations of Paragraph 329.

25 330. Nu Mark admits that the GreenSmoke product includes a passage for
26 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
27 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 330.

3 331. Nu Mark admits that the GreenSmoke product includes a battery
4 component and a sensor component. Because the claims of the patent have yet to be
5 construed, Nu Mark is without sufficient knowledge or information to form a belief
6 as to whether the product meets the stated limitation “as recited in” the claims, and
7 on that basis denies the remaining allegations of Paragraph 331.

8 332. Nu Mark admits that the GreenSmoke product contains liquid and
9 includes a heating component. Because the claims of the patent have yet to be
10 construed, Nu Mark is without sufficient knowledge or information to form a belief
11 as to whether the product meets the stated limitation “as recited in” the claims, and
12 on that basis denies the remaining allegations of Paragraph 332.

13 333. Nu Mark admits that the GreenSmoke product includes a passage for
14 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the remaining allegations of Paragraph 333.

18 334. Nu Mark denies the allegations of Paragraph 334 of the Complaint.

19 335. Nu Mark admits that the GreenSmoke product includes a heating
20 component. Because the claims of the patent have yet to be construed, Nu Mark is
21 without sufficient knowledge or information to form a belief as to whether the
22 product meets the stated limitation “as recited in” the claims, and on that basis
23 denies the remaining allegations of Paragraph 335.

24 336. Nu Mark denies the allegations of Paragraph 336 of the Complaint.

25 337. Nu Mark admits that the GreenSmoke product contains liquid. Because
26 the claims of the patent have yet to be construed, Nu Mark is without sufficient
27 knowledge or information to form a belief as to whether the product meets the stated
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1 limitation “as recited in” the claims, and on that basis denies the remaining
2 allegations of Paragraph 337.

3 338. Nu Mark denies the allegations of Paragraph 338 of the Complaint.

4 339. Nu Mark denies the allegations of Paragraph 339 of the Complaint.

5 340. Nu Mark denies the allegations of Paragraph 340 of the Complaint.

6 341. Nu Mark admits the allegations of Paragraph 341 of the Complaint.

7 342. Nu Mark admits that Exhibit P to the Complaint states: “MarkTen® e-
8 vapor products are designed to work together, in order to give vapers the best
9 possible vaping experience. Using MarkTen® e-vapor products with non-
10 MarkTen® e-vapor products may be unsafe, and is not advised.” Nu Mark denies
11 the remaining allegations of Paragraph 342 of the Complaint.

12 343. Nu Mark admits that Exhibit P to the Complaint states: “MarkTen® e-
13 vapor products are designed to work together, in order to give vapers the best
14 possible vaping experience. Using MarkTen® e-vapor products with non-
15 MarkTen® e-vapor products may be unsafe, and is not advised.” Nu Mark denies
16 the remaining allegations of Paragraph 343 of the Complaint.

17 344. Nu Mark admits that Exhibit P to the Complaint states: “Customers
18 should note that using MarkTen® e-vapor products with another brand's e-vapor
19 products will invalidate the warranty.” Nu Mark denies the remaining allegations of
20 Paragraph 344 of the Complaint.

21 345. Nu Mark denies the allegations of Paragraph 345 of the Complaint..

22 346. Nu Mark denies the allegations of Paragraph 346 of the Complaint.

23 347. Nu Mark denies the allegations of Paragraph 347 of the Complaint.

24 348. Nu Mark denies the allegations of Paragraph 348 of the Complaint.

25 349. Nu Mark denies the allegations of Paragraph 349 of the Complaint.

1 **ANSWER TO FOURTH CLAIM FOR RELIEF**

2 350. Answering Paragraph 350 of the Complaint, Nu Mark incorporates its
3 responses in Paragraphs 1-349 by reference as if fully set forth herein.

4 351. Nu Mark admits that United States Patent No. 8,689,805 (the “’805
5 Patent”) was issued by the USPTO on April 8, 2014. Nu Mark denies that the patent
6 is valid. Nu Mark is without sufficient knowledge or information to form a belief
7 as to the remaining allegations of Paragraph 351 of the Complaint, and on that basis
8 denies them.

9 352. Nu Mark admits that it has had knowledge of the ‘805 patent. Nu Mark
10 denies the remaining allegations of Paragraph 352 of the Complaint.

11 353. Nu Mark admits that on May 11, 2015, Vapor Corp served a subpoena
12 identifying the ‘805 patent on Altria Group, Inc. Nu Mark denies the remaining
13 allegations of Paragraph 353 of the Complaint.

14 354. Nu Mark admits that Altria Group, Inc. filed a motion to quash a
15 subpoena served by Vapor Corp in the District Court for the Eastern District of
16 Virginia on May 26, 2015. Nu Mark denies the remaining allegations of Paragraph
17 354 of the Complaint.

18 355. Nu Mark admits that it is a subsidiary of Altria Group, Inc. and that it
19 has had knowledge of the ‘805 Patent since at least May 11, 2015. Nu Mark denies
20 the remaining allegations of Paragraph 355 of the Complaint.

21 356. Nu Mark is without sufficient knowledge or information to form a
22 belief as to the allegations of Paragraph 356 of the Complaint, and on that basis
23 denies them.

24 357. Nu Mark denies the allegations in Paragraph 357 of the Complaint.

25 358. Nu Mark denies the allegations in Paragraph 358 of the Complaint.

26 359. Nu Mark denies the allegations in Paragraph 359 of the Complaint.

27 360. Nu Mark denies the allegations in Paragraph 360 of the Complaint.
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1 **MarkTen**

2 361. Nu Mark denies the allegations of Paragraph 361 of the Complaint.

3 362. Because the claims of the patent have yet to be construed, Nu Mark is
4 without sufficient knowledge or information to form a belief as to whether the
5 product meets the stated limitation “as recited in” the claims, and on that basis
6 denies the allegations of Paragraph 362.

7 363. Nu Mark admits that the MarkTen product includes a housing.
8 Because the claims of the patent have yet to be construed, Nu Mark is without
9 sufficient knowledge or information to form a belief as to whether the product meets
10 the stated limitation “as recited in” the claims, and on that basis denies the
11 remaining allegations of Paragraph 363.

12 364. Nu Mark admits that the MarkTen product contains liquid and includes
13 a battery component and a heating component. Because the claims of the patent
14 have yet to be construed, Nu Mark is without sufficient knowledge or information to
15 form a belief as to whether the product meets the stated limitation “as recited in” the
16 claims, and on that basis denies the remaining allegations of Paragraph 364.

17 365. Nu Mark admits that the MarkTen product includes a passage for
18 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the remaining allegations of Paragraph 365.

22 366. Nu Mark admits that the MarkTen product includes a passage for
23 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 366.

1 367. Nu Mark admits that the MarkTen product includes a passage for
2 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 367.

6 368. Nu Mark denies the allegations of Paragraph 368 of the Complaint.

7 369. Nu Mark admits that the MarkTen product includes a sensor
8 component. Because the claims of the patent have yet to be construed, Nu Mark is
9 without sufficient knowledge or information to form a belief as to whether the
10 product meets the stated limitation “as recited in” the claims, and on that basis
11 denies the remaining allegations of Paragraph 369.

12 370. Nu Mark denies the allegations of Paragraph 370 of the Complaint.

13 371. Nu Mark admits that the MarkTen product contains liquid. Because the
14 claims of the patent have yet to be construed, Nu Mark is without sufficient
15 knowledge or information to form a belief as to whether the product meets the stated
16 limitation “as recited in” the claims, and on that basis denies the remaining
17 allegations of Paragraph 371.

18 372. Nu Mark denies the allegations of Paragraph 372 of the Complaint.

19 373. Nu Mark admits that the MarkTen product contains liquid. Because the
20 claims of the patent have yet to be construed, Nu Mark is without sufficient
21 knowledge or information to form a belief as to whether the product meets the stated
22 limitation “as recited in” the claims, and on that basis denies the remaining
23 allegations of Paragraph 373.

24 374. Nu Mark denies the allegations of Paragraph 374 of the Complaint.

25 375. Nu Mark admits that the MarkTen product includes a passage for
26 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
27 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 375.

3 **MarkTen XL**

4 376. Nu Mark denies the allegations of Paragraph 376 of the Complaint.

5 377. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the allegations of Paragraph 377.

9 378. Nu Mark admits that the MarkTen XL product includes a housing.
10 Because the claims of the patent have yet to be construed, Nu Mark is without
11 sufficient knowledge or information to form a belief as to whether the product meets
12 the stated limitation “as recited in” the claims, and on that basis denies the
13 remaining allegations of Paragraph 378.

14 379. Nu Mark admits that the MarkTen XL product contains liquid and
15 includes a battery component and a heating component. Because the claims of the
16 patent have yet to be construed, Nu Mark is without sufficient knowledge or
17 information to form a belief as to whether the product meets the stated limitation “as
18 recited in” the claims, and on that basis denies the remaining allegations of
19 Paragraph 379.

20 380. Nu Mark admits that the MarkTen XL product includes a passage for
21 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
22 without sufficient knowledge or information to form a belief as to whether the
23 product meets the stated limitation “as recited in” the claims, and on that basis
24 denies the remaining allegations of Paragraph 380.

25 381. Nu Mark admits that the MarkTen XL product includes a passage for
26 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
27 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 381.

3 382. Nu Mark admits that the MarkTen XL product includes a passage for
4 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
5 without sufficient knowledge or information to form a belief as to whether the
6 product meets the stated limitation “as recited in” the claims, and on that basis
7 denies the remaining allegations of Paragraph 382.

8 383. Nu Mark denies the allegations of Paragraph 383 of the Complaint.

9 384. Nu Mark admits that the MarkTen XL product includes a sensor
10 component. Because the claims of the patent have yet to be construed, Nu Mark is
11 without sufficient knowledge or information to form a belief as to whether the
12 product meets the stated limitation “as recited in” the claims, and on that basis
13 denies the remaining allegations of Paragraph 384.

14 385. Nu Mark denies the allegations of Paragraph 385 of the Complaint.

15 386. Nu Mark admits that the MarkTen XL product contains liquid.
16 Because the claims of the patent have yet to be construed, Nu Mark is without
17 sufficient knowledge or information to form a belief as to whether the product meets
18 the stated limitation “as recited in” the claims, and on that basis denies the
19 remaining allegations of Paragraph 386.

20 387. Nu Mark denies the allegations of Paragraph 387 of the Complaint.

21 388. Nu Mark admits that the MarkTen XL product contains liquid.
22 Because the claims of the patent have yet to be construed, Nu Mark is without
23 sufficient knowledge or information to form a belief as to whether the product meets
24 the stated limitation “as recited in” the claims, and on that basis denies the
25 remaining allegations of Paragraph 388.

26 389. Nu Mark denies the allegations of Paragraph 389 of the Complaint.
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1 390. Nu Mark admits that the MarkTen XL product includes a passage for
2 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 390.

6 **GreenSmoke**

7 391. Nu Mark denies the allegations of Paragraph 391 of the Complaint.

8 392. Because the claims of the patent have yet to be construed, Nu Mark is
9 without sufficient knowledge or information to form a belief as to whether the
10 product meets the stated limitation “as recited in” the claims, and on that basis
11 denies the allegations of Paragraph 392.

12 393. Nu Mark admits that the GreenSmoke product includes a housing.
13 Because the claims of the patent have yet to be construed, Nu Mark is without
14 sufficient knowledge or information to form a belief as to whether the product meets
15 the stated limitation “as recited in” the claims, and on that basis denies the
16 remaining allegations of Paragraph 393.

17 394. Nu Mark admits that the GreenSmoke product contains liquid and
18 includes a battery component and a heating component. Because the claims of the
19 patent have yet to be construed, Nu Mark is without sufficient knowledge or
20 information to form a belief as to whether the product meets the stated limitation “as
21 recited in” the claims, and on that basis denies the remaining allegations of
22 Paragraph 394.

23 395. Nu Mark admits that the GreenSmoke product includes a passage for
24 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
25 without sufficient knowledge or information to form a belief as to whether the
26 product meets the stated limitation “as recited in” the claims, and on that basis
27 denies the remaining allegations of Paragraph 395.
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1 396. Nu Mark admits that the GreenSmoke product includes a passage for
2 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 396.

6 397. Nu Mark admits that the GreenSmoke product includes a passage for
7 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
8 without sufficient knowledge or information to form a belief as to whether the
9 product meets the stated limitation “as recited in” the claims, and on that basis
10 denies the remaining allegations of Paragraph 397.

11 398. Nu Mark denies the allegations of Paragraph 398 of the Complaint.

12 399. Nu Mark admits that the GreenSmoke product includes a sensor
13 component. Because the claims of the patent have yet to be construed, Nu Mark is
14 without sufficient knowledge or information to form a belief as to whether the
15 product meets the stated limitation “as recited in” the claims, and on that basis
16 denies the remaining allegations of Paragraph 399.

17 400. Nu Mark denies the allegations of Paragraph 400 of the Complaint.

18 401. Nu Mark admits that the GreenSmoke product contains liquid. Because
19 the claims of the patent have yet to be construed, Nu Mark is without sufficient
20 knowledge or information to form a belief as to whether the product meets the stated
21 limitation “as recited in” the claims, and on that basis denies the remaining
22 allegations of Paragraph 401.

23 402. Nu Mark denies the allegations of Paragraph 402 of the Complaint.

24 403. Nu Mark admits that the GreenSmoke product contains liquid. Because
25 the claims of the patent have yet to be construed, Nu Mark is without sufficient
26 knowledge or information to form a belief as to whether the product meets the stated
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1 limitation “as recited in” the claims, and on that basis denies the remaining
2 allegations of Paragraph 403.

3 404. Nu Mark denies the allegations of Paragraph 404 of the Complaint.

4 405. Nu Mark admits that the GreenSmoke product includes a passage for
5 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the remaining allegations of Paragraph 405.

9 406. Nu Mark denies the allegations of Paragraph 406 of the Complaint.

10 407. Nu Mark denies the allegations of Paragraph 407 of the Complaint.

11 408. Nu Mark denies the allegations of Paragraph 408 of the Complaint.

12 409. Nu Mark admits the allegations of Paragraph 409 of the Complaint.

13 410. Nu Mark admits that Exhibit P to the Complaint states: “MarkTen® e-
14 vapor products are designed to work together, in order to give vapers the best
15 possible vaping experience. Using MarkTen® e-vapor products with non-
16 MarkTen® e-vapor products may be unsafe, and is not advised.” Nu Mark denies
17 the remaining allegations of Paragraph 410 of the Complaint.

18 411. Nu Mark admits that Exhibit P to the Complaint states: “MarkTen® e-
19 vapor products are designed to work together, in order to give vapers the best
20 possible vaping experience. Using MarkTen® e-vapor products with non-
21 MarkTen® e-vapor products may be unsafe, and is not advised.” Nu Mark denies
22 the remaining allegations of Paragraph 411 of the Complaint.

23 412. Nu Mark admits that Exhibit P to the Complaint states: “Customers
24 should note that using MarkTen® e-vapor products with another brand's e-vapor
25 products will invalidate the warranty.” Nu Mark denies the remaining allegations of
26 Paragraph 412 of the Complaint.

27 413. Nu Mark denies the allegations of Paragraph 413 of the Complaint..
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1 414. Nu Mark denies the allegations of Paragraph 414 of the Complaint.

2 415. Nu Mark denies the allegations of Paragraph 415 of the Complaint.

3 416. Nu Mark denies the allegations of Paragraph 416 of the Complaint.

4 417. Nu Mark denies the allegations of Paragraph 417 of the Complaint.

5 **ANSWER TO FIFTH CLAIM FOR RELIEF**

6 418. Answering Paragraph 418 of the Complaint, Nu Mark incorporates its
7 responses in Paragraphs 1-417 by reference as if fully set forth herein.

8 419. Nu Mark admits that United States Patent No. 8,490,628 (the “’628
9 Patent”) was issued by the USPTO on July 23, 2013. Nu Mark denies that the
10 patent is valid. Nu Mark is without sufficient knowledge or information to form a
11 belief as to the remaining allegations of Paragraph 419 of the Complaint, and on that
12 basis denies them.

13 420. Nu Mark admits that it has had knowledge of the ‘628 patent. Nu Mark
14 denies the remaining allegations of Paragraph 420 of the Complaint.

15 421. Nu Mark admits that on May 11, 2015, Vapor Corp served a subpoena
16 identifying the ‘628 patent on Altria Group, Inc. Nu Mark denies the remaining
17 allegations of Paragraph 421 of the Complaint.

18 422. Nu Mark admits that Altria Group, Inc. filed a motion to quash a
19 subpoena served by Vapor Corp in the District Court for the Eastern District of
20 Virginia on May 26, 2015. Nu Mark denies the remaining allegations of Paragraph
21 422 of the Complaint.

22 423. Nu Mark admits that it is a subsidiary of Altria Group, Inc. and that it
23 has had knowledge of the ‘628 Patent since at least May 11, 2015. Nu Mark denies
24 the remaining allegations of Paragraph 423 of the Complaint.

25 424. Nu Mark is without sufficient knowledge or information to form a
26 belief as to the allegations of Paragraph 424 of the Complaint, and on that basis
27 denies them.

1 425. Nu Mark denies the allegations in Paragraph 425 of the Complaint.

2 426. Nu Mark denies the allegations in Paragraph 426 of the Complaint.

3 427. Nu Mark denies the allegations in Paragraph 427 of the Complaint.

4 428. Nu Mark denies the allegations in Paragraph 428 of the Complaint.

5 **MarkTen**

6 429. Nu Mark denies the allegations of Paragraph 429 of the Complaint.

7 430. Because the claims of the patent have yet to be construed, Nu Mark is
8 without sufficient knowledge or information to form a belief as to whether the
9 product meets the stated limitation “as recited in” the claims, and on that basis
10 denies the allegations of Paragraph 430.

11 431. Nu Mark admits that the MarkTen product includes a housing.
12 Because the claims of the patent have yet to be construed, Nu Mark is without
13 sufficient knowledge or information to form a belief as to whether the product meets
14 the stated limitation “as recited in” the claims, and on that basis denies the
15 remaining allegations of Paragraph 431.

16 432. Nu Mark admits that the MarkTen product contains liquid. Because the
17 claims of the patent have yet to be construed, Nu Mark is without sufficient
18 knowledge or information to form a belief as to whether the product meets the stated
19 limitation “as recited in” the claims, and on that basis denies the remaining
20 allegations of Paragraph 432.

21 433. Nu Mark admits that the MarkTen product includes a passage for
22 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
23 without sufficient knowledge or information to form a belief as to whether the
24 product meets the stated limitation “as recited in” the claims, and on that basis
25 denies the remaining allegations of Paragraph 433.

26 434. Because the claims of the patent have yet to be construed, Nu Mark is
27 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the allegations of Paragraph 434.

3 435. Nu Mark admits that the MarkTen product includes a heating
4 component. Because the claims of the patent have yet to be construed, Nu Mark is
5 without sufficient knowledge or information to form a belief as to whether the
6 product meets the stated limitation “as recited in” the claims, and on that basis
7 denies the remaining allegations of Paragraph 435.

8 436. Nu Mark denies the allegations of Paragraph 436 of the Complaint.

9 437. Nu Mark admits that the MarkTen product includes a battery
10 component and a sensor component. Because the claims of the patent have yet to be
11 construed, Nu Mark is without sufficient knowledge or information to form a belief
12 as to whether the product meets the stated limitation “as recited in” the claims, and
13 on that basis denies the remaining allegations of Paragraph 437.

14 438. Nu Mark denies the allegations of Paragraph 438 of the Complaint.

15 439. Because the claims of the patent have yet to be construed, Nu Mark is
16 without sufficient knowledge or information to form a belief as to whether the
17 product meets the stated limitation “as recited in” the claims, and on that basis
18 denies the allegations of Paragraph 439.

19 440. Nu Mark denies the allegations of Paragraph 440 of the Complaint.

20 441. Nu Mark admits that the MarkTen product includes absorbent material.
21 Because the claims of the patent have yet to be construed, Nu Mark is without
22 sufficient knowledge or information to form a belief as to whether the product meets
23 the stated limitation “as recited in” the claims, and on that basis denies the
24 remaining allegations of Paragraph 441.

25 442. Nu Mark denies the allegations of Paragraph 442 of the Complaint.

26 443. Because the claims of the patent have yet to be construed, Nu Mark is
27 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the allegations of Paragraph 443.

3 444. Nu Mark admits that the MarkTen product includes a housing.
4 Because the claims of the patent have yet to be construed, Nu Mark is without
5 sufficient knowledge or information to form a belief as to whether the product meets
6 the stated limitation “as recited in” the claims, and on that basis denies the
7 remaining allegations of Paragraph 444.

8 445. Nu Mark admits that the MarkTen product contains liquid and includes
9 a battery component. Because the claims of the patent have yet to be construed, Nu
10 Mark is without sufficient knowledge or information to form a belief as to whether
11 the product meets the stated limitation “as recited in” the claims, and on that basis
12 denies the remaining allegations of Paragraph 445.

13 446. Nu Mark admits that the MarkTen product includes a passage for
14 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the remaining allegations of Paragraph 446.

18 447. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the allegations of Paragraph 447.

22 448. Nu Mark admits that the MarkTen product contains liquid. Because the
23 claims of the patent have yet to be construed, Nu Mark is without sufficient
24 knowledge or information to form a belief as to whether the product meets the stated
25 limitation “as recited in” the claims, and on that basis denies the remaining
26 allegations of Paragraph 448.

1 449. Nu Mark admits that the MarkTen product includes a heating
2 component. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 449.

6 450. Because the claims of the patent have yet to be construed, Nu Mark is
7 without sufficient knowledge or information to form a belief as to whether the
8 product meets the stated limitation “as recited in” the claims, and on that basis
9 denies the remaining allegations of Paragraph 450.

10 **MarkTen XL**

11 451. Nu Mark denies the allegations of Paragraph 451 of the Complaint.

12 452. Because the claims of the patent have yet to be construed, Nu Mark is
13 without sufficient knowledge or information to form a belief as to whether the
14 product meets the stated limitation “as recited in” the claims, and on that basis
15 denies the allegations of Paragraph 452.

16 453. Nu Mark admits that the MarkTen XL product includes a housing.
17 Because the claims of the patent have yet to be construed, Nu Mark is without
18 sufficient knowledge or information to form a belief as to whether the product meets
19 the stated limitation “as recited in” the claims, and on that basis denies the
20 remaining allegations of Paragraph 453.

21 454. Nu Mark admits that the MarkTen XL product contains liquid.
22 Because the claims of the patent have yet to be construed, Nu Mark is without
23 sufficient knowledge or information to form a belief as to whether the product meets
24 the stated limitation “as recited in” the claims, and on that basis denies the
25 remaining allegations of Paragraph 454.

26 455. Nu Mark admits that the MarkTen XL product includes a passage for
27 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
28

1 without sufficient knowledge or information to form a belief as to whether the
2 product meets the stated limitation “as recited in” the claims, and on that basis
3 denies the remaining allegations of Paragraph 455.

4 456. Because the claims of the patent have yet to be construed, Nu Mark is
5 without sufficient knowledge or information to form a belief as to whether the
6 product meets the stated limitation “as recited in” the claims, and on that basis
7 denies the allegations of Paragraph 456.

8 457. Nu Mark admits that the MarkTen XL product includes a heating
9 component. Because the claims of the patent have yet to be construed, Nu Mark is
10 without sufficient knowledge or information to form a belief as to whether the
11 product meets the stated limitation “as recited in” the claims, and on that basis
12 denies the remaining allegations of Paragraph 457.

13 458. Nu Mark denies the allegations of Paragraph 458 of the Complaint.

14 459. Nu Mark admits that the MarkTen XL product includes a battery
15 component and a sensor component. Because the claims of the patent have yet to be
16 construed, Nu Mark is without sufficient knowledge or information to form a belief
17 as to whether the product meets the stated limitation “as recited in” the claims, and
18 on that basis denies the remaining allegations of Paragraph 459.

19 460. Nu Mark denies the allegations of Paragraph 460 of the Complaint.

20 461. Because the claims of the patent have yet to be construed, Nu Mark is
21 without sufficient knowledge or information to form a belief as to whether the
22 product meets the stated limitation “as recited in” the claims, and on that basis
23 denies the allegations of Paragraph 461.

24 462. Nu Mark denies the allegations of Paragraph 462 of the Complaint.

25 463. Nu Mark admits that the MarkTen XL product includes absorbent
26 material. Because the claims of the patent have yet to be construed, Nu Mark is
27 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 463.

3 464. Nu Mark denies the allegations of Paragraph 464 of the Complaint.

4 465. Because the claims of the patent have yet to be construed, Nu Mark is
5 without sufficient knowledge or information to form a belief as to whether the
6 product meets the stated limitation “as recited in” the claims, and on that basis
7 denies the allegations of Paragraph 465.

8 466. Nu Mark admits that the MarkTen XL product includes a housing.
9 Because the claims of the patent have yet to be construed, Nu Mark is without
10 sufficient knowledge or information to form a belief as to whether the product meets
11 the stated limitation “as recited in” the claims, and on that basis denies the
12 remaining allegations of Paragraph 466.

13 467. Nu Mark admits that the MarkTen XL product contains liquid and
14 includes a battery component. Because the claims of the patent have yet to be
15 construed, Nu Mark is without sufficient knowledge or information to form a belief
16 as to whether the product meets the stated limitation “as recited in” the claims, and
17 on that basis denies the remaining allegations of Paragraph 467.

18 468. Nu Mark admits that the MarkTen XL product includes a passage for
19 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
20 without sufficient knowledge or information to form a belief as to whether the
21 product meets the stated limitation “as recited in” the claims, and on that basis
22 denies the remaining allegations of Paragraph 468.

23 469. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the allegations of Paragraph 469.

1 470. Nu Mark admits that the MarkTen XL product contains liquid.
2 Because the claims of the patent have yet to be construed, Nu Mark is without
3 sufficient knowledge or information to form a belief as to whether the product meets
4 the stated limitation “as recited in” the claims, and on that basis denies the
5 remaining allegations of Paragraph 470.

6 471. Nu Mark admits that the MarkTen XL product includes a heating
7 component. Because the claims of the patent have yet to be construed, Nu Mark is
8 without sufficient knowledge or information to form a belief as to whether the
9 product meets the stated limitation “as recited in” the claims, and on that basis
10 denies the remaining allegations of Paragraph 471.

11 472. Because the claims of the patent have yet to be construed, Nu Mark is
12 without sufficient knowledge or information to form a belief as to whether the
13 product meets the stated limitation “as recited in” the claims, and on that basis
14 denies the allegations of Paragraph 472.

15 **GreenSmoke**

16 473. Nu Mark denies the allegations of Paragraph 473 of the Complaint.

17 474. Because the claims of the patent have yet to be construed, Nu Mark is
18 without sufficient knowledge or information to form a belief as to whether the
19 product meets the stated limitation “as recited in” the claims, and on that basis
20 denies the allegations of Paragraph 474.

21 475. Nu Mark admits that the GreenSmoke product includes a housing.
22 Because the claims of the patent have yet to be construed, Nu Mark is without
23 sufficient knowledge or information to form a belief as to whether the product meets
24 the stated limitation “as recited in” the claims, and on that basis denies the
25 remaining allegations of Paragraph 475.

26 476. Nu Mark admits that the GreenSmoke product contains liquid. Because
27 the claims of the patent have yet to be construed, Nu Mark is without sufficient
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1 knowledge or information to form a belief as to whether the product meets the stated
2 limitation “as recited in” the claims, and on that basis denies the remaining
3 allegations of Paragraph 476.

4 477. Nu Mark admits that the GreenSmoke product includes a passage for
5 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the remaining allegations of Paragraph 477.

9 478. Because the claims of the patent have yet to be construed, Nu Mark is
10 without sufficient knowledge or information to form a belief as to whether the
11 product meets the stated limitation “as recited in” the claims, and on that basis
12 denies the allegations of Paragraph 478.

13 479. Nu Mark admits that the GreenSmoke product includes a heating
14 component. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the remaining allegations of Paragraph 479.

18 480. Nu Mark denies the allegations of Paragraph 480 of the Complaint.

19 481. Nu Mark admits that the GreenSmoke product includes a battery
20 component and a sensor component. Because the claims of the patent have yet to be
21 construed, Nu Mark is without sufficient knowledge or information to form a belief
22 as to whether the product meets the stated limitation “as recited in” the claims, and
23 on that basis denies the remaining allegations of Paragraph 481.

24 482. Nu Mark denies the allegations of Paragraph 482 of the Complaint.

25 483. Because the claims of the patent have yet to be construed, Nu Mark is
26 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the allegations of Paragraph 483.

3 484. Nu Mark denies the allegations of Paragraph 484 of the Complaint.

4 485. Nu Mark admits that the GreenSmoke product includes absorbent
5 material. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the remaining allegations of Paragraph 485.

9 486. Nu Mark denies the allegations of Paragraph 486 of the Complaint.

10 487. Because the claims of the patent have yet to be construed, Nu Mark is
11 without sufficient knowledge or information to form a belief as to whether the
12 product meets the stated limitation “as recited in” the claims, and on that basis
13 denies the allegations of Paragraph 487.

14 488. Nu Mark admits that the GreenSmoke product includes a housing.
15 Because the claims of the patent have yet to be construed, Nu Mark is without
16 sufficient knowledge or information to form a belief as to whether the product meets
17 the stated limitation “as recited in” the claims, and on that basis denies the
18 remaining allegations of Paragraph 488.

19 489. Nu Mark admits that the GreenSmoke product contains liquid and
20 includes a battery component. Because the claims of the patent have yet to be
21 construed, Nu Mark is without sufficient knowledge or information to form a belief
22 as to whether the product meets the stated limitation “as recited in” the claims, and
23 on that basis denies the remaining allegations of Paragraph 489.

24 490. Nu Mark admits that the GreenSmoke product includes a passage for
25 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
26 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 490.

3 491. Because the claims of the patent have yet to be construed, Nu Mark is
4 without sufficient knowledge or information to form a belief as to whether the
5 product meets the stated limitation “as recited in” the claims, and on that basis
6 denies the allegations of Paragraph 491.

7 492. Nu Mark admits that the GreenSmoke product contains liquid. Because
8 the claims of the patent have yet to be construed, Nu Mark is without sufficient
9 knowledge or information to form a belief as to whether the product meets the stated
10 limitation “as recited in” the claims, and on that basis denies the remaining
11 allegations of Paragraph 492.

12 493. Nu Mark admits that the GreenSmoke product includes a heating
13 component. Because the claims of the patent have yet to be construed, Nu Mark is
14 without sufficient knowledge or information to form a belief as to whether the
15 product meets the stated limitation “as recited in” the claims, and on that basis
16 denies the remaining allegations of Paragraph 493.

17 494. Because the claims of the patent have yet to be construed, Nu Mark is
18 without sufficient knowledge or information to form a belief as to whether the
19 product meets the stated limitation “as recited in” the claims, and on that basis
20 denies the allegations of Paragraph 494.

21 495. Nu Mark denies the allegations of Paragraph 495 of the Complaint.

22 496. Nu Mark denies the allegations of Paragraph 496 of the Complaint.

23 497. Nu Mark denies the allegations of Paragraph 497 of the Complaint.

24 498. Nu Mark admits the allegations of Paragraph 498 of the Complaint.

25 499. Nu Mark admits that Exhibit P to the Complaint states: “MarkTen® e-
26 vapor products are designed to work together, in order to give vapers the best
27 possible vaping experience. Using MarkTen® e-vapor products with non-
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1 MarkTen® e-vapor products may be unsafe, and is not advised.” Nu Mark denies
2 the remaining allegations of Paragraph 499 of the Complaint.

3 500. Nu Mark admits that Exhibit P to the Complaint states: “MarkTen® e-
4 vapor products are designed to work together, in order to give vapers the best
5 possible vaping experience. Using MarkTen® e-vapor products with non-
6 MarkTen® e-vapor products may be unsafe, and is not advised.” Nu Mark denies
7 the remaining allegations of Paragraph 500 of the Complaint.

8 501. Nu Mark admits that Exhibit P to the Complaint states: “Customers
9 should note that using MarkTen® e-vapor products with another brand's e-vapor
10 products will invalidate the warranty.” Nu Mark denies the remaining allegations of
11 Paragraph 501 of the Complaint.

12 502. Nu Mark denies the allegations of Paragraph 502 of the Complaint..

13 503. Nu Mark denies the allegations of Paragraph 503 of the Complaint.

14 504. Nu Mark denies the allegations of Paragraph 504 of the Complaint.

15 505. Nu Mark denies the allegations of Paragraph 505 of the Complaint.

16 506. Nu Mark denies the allegations of Paragraph 506 of the Complaint.

17 **ANSWER TO SIXTH CLAIM FOR RELIEF**

18 507. Answering Paragraph 507 of the Complaint, Nu Mark incorporates its
19 responses in Paragraphs 1-506 by reference as if fully set forth herein.

20 508. Nu Mark admits that United States Patent No. 8,863,752 (the “’752
21 Patent”) was issued by the USPTO on October 21, 2014. Nu Mark denies that the
22 patent is valid. Nu Mark is without sufficient knowledge or information to form a
23 belief as to the remaining allegations of Paragraph 508 of the Complaint, and on that
24 basis denies them.

25 509. Nu Mark admits that it has had knowledge of the ‘752 patent. Nu Mark
26 denies the remaining allegations of Paragraph 509 of the Complaint.

1 510. Nu Mark admits that on May 11, 2015, Vapor Corp served a subpoena
2 identifying the ‘752 patent on Altria Group, Inc. Nu Mark denies the remaining
3 allegations of Paragraph 510 of the Complaint.

4 511. Nu Mark admits that Altria Group, Inc. filed a motion to quash a
5 subpoena served by Vapor Corp in the District Court for the Eastern District of
6 Virginia on May 26, 2015. Nu Mark denies the remaining allegations of Paragraph
7 511 of the Complaint.

8 512. Nu Mark admits that it is a subsidiary of Altria Group, Inc. and that it
9 has had knowledge of the ‘752 Patent since at least May 11, 2015. Nu Mark denies
10 the remaining allegations of Paragraph 512 of the Complaint.

11 513. Nu Mark is without sufficient knowledge or information to form a
12 belief as to the allegations of Paragraph 513 of the Complaint, and on that basis
13 denies them.

14 514. Nu Mark denies the allegations in Paragraph 514 of the Complaint.

15 515. Nu Mark denies the allegations in Paragraph 515 of the Complaint.

16 516. Nu Mark denies the allegations in Paragraph 516 of the Complaint.

17 517. Nu Mark denies the allegations in Paragraph 517 of the Complaint.

18 **MarkTen**

19 518. Nu Mark denies the allegations of Paragraph 518 of the Complaint.

20 519. Because the claims of the patent have yet to be construed, Nu Mark is
21 without sufficient knowledge or information to form a belief as to whether the
22 product meets the stated limitation “as recited in” the claims, and on that basis
23 denies the allegations of Paragraph 519.

24 520. Nu Mark admits that the MarkTen product contains liquid and includes
25 a threaded component. Because the claims of the patent have yet to be construed,
26 Nu Mark is without sufficient knowledge or information to form a belief as to
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1 whether the product meets the stated limitation “as recited in” the claims, and on
2 that basis denies the remaining allegations of Paragraph 520.

3 521. Nu Mark admits that the MarkTen product includes a threaded
4 component. Because the claims of the patent have yet to be construed, Nu Mark is
5 without sufficient knowledge or information to form a belief as to whether the
6 product meets the stated limitation “as recited in” the claims, and on that basis
7 denies the remaining allegations of Paragraph 521.

8 522. Nu Mark admits that the MarkTen product contains liquid. Because the
9 claims of the patent have yet to be construed, Nu Mark is without sufficient
10 knowledge or information to form a belief as to whether the product meets the stated
11 limitation “as recited in” the claims, and on that basis denies the remaining
12 allegations of Paragraph 522.

13 523. Nu Mark admits that the MarkTen product includes a passage for
14 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the remaining allegations of Paragraph 523.

18 524. Nu Mark denies the allegations of Paragraph 524 of the Complaint.

19 525. Nu Mark admits that the MarkTen product includes a threaded
20 component. Because the claims of the patent have yet to be construed, Nu Mark is
21 without sufficient knowledge or information to form a belief as to whether the
22 product meets the stated limitation “as recited in” the claims, and on that basis
23 denies the remaining allegations of Paragraph 525.

24 526. Nu Mark denies the allegations of Paragraph 526 of the Complaint.

25 527. Nu Mark admits that the MarkTen product includes a heating
26 component. Because the claims of the patent have yet to be construed, Nu Mark is
27 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 527.

3 528. Nu Mark denies the allegations of Paragraph 528 of the Complaint.

4 529. Nu Mark admits that the MarkTen product includes a heating
5 component. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the remaining allegations of Paragraph 529.

9 530. Nu Mark denies the allegations of Paragraph 530 of the Complaint.

10 531. Nu Mark admits that the MarkTen product includes absorbent material.
11 Because the claims of the patent have yet to be construed, Nu Mark is without
12 sufficient knowledge or information to form a belief as to whether the product meets
13 the stated limitation “as recited in” the claims, and on that basis denies the
14 remaining allegations of Paragraph 531.

15 532. Nu Mark denies the allegations of Paragraph 532 of the Complaint.

16 533. Nu Mark admits that the MarkTen product includes a passage for
17 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
18 without sufficient knowledge or information to form a belief as to whether the
19 product meets the stated limitation “as recited in” the claims, and on that basis
20 denies the remaining allegations of Paragraph 533.

21 534. Nu Mark denies the allegations of Paragraph 534 of the Complaint.

22 535. Nu Mark admits that the MarkTen product includes a passage for
23 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 535.

27 536. Nu Mark denies the allegations of Paragraph 536 of the Complaint.
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1 537. Nu Mark admits that the MarkTen product includes a passage for
2 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 537.

6 538. Nu Mark denies the allegations of Paragraph 538 of the Complaint.

7 539. Because the claims of the patent have yet to be construed, Nu Mark is
8 without sufficient knowledge or information to form a belief as to whether the
9 product meets the stated limitation “as recited in” the claims, and on that basis
10 denies the allegations of Paragraph 539.

11 540. Nu Mark admits that the MarkTen product contains liquid. Because the
12 claims of the patent have yet to be construed, Nu Mark is without sufficient
13 knowledge or information to form a belief as to whether the product meets the stated
14 limitation “as recited in” the claims, and on that basis denies the remaining
15 allegations of Paragraph 540.

16 541. Nu Mark admits that the MarkTen product includes a threaded
17 component. Because the claims of the patent have yet to be construed, Nu Mark is
18 without sufficient knowledge or information to form a belief as to whether the
19 product meets the stated limitation “as recited in” the claims, and on that basis
20 denies the remaining allegations of Paragraph 541.

21 542. Nu Mark admits that the MarkTen product includes a threaded
22 component. Because the claims of the patent have yet to be construed, Nu Mark is
23 without sufficient knowledge or information to form a belief as to whether the
24 product meets the stated limitation “as recited in” the claims, and on that basis
25 denies the remaining allegations of Paragraph 542.

26 543. Nu Mark admits that the MarkTen product contains liquid and includes
27 a threaded component. Because the claims of the patent have yet to be construed,
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1 Nu Mark is without sufficient knowledge or information to form a belief as to
2 whether the product meets the stated limitation “as recited in” the claims, and on
3 that basis denies the remaining allegations of Paragraph 543.

4 544. Nu Mark admits that the MarkTen product includes a passage for
5 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the remaining allegations of Paragraph 544.

9 545. Nu Mark denies the allegations of Paragraph 545 of the Complaint.

10 546. Nu Mark admits that the MarkTen product includes a heating
11 component. Because the claims of the patent have yet to be construed, Nu Mark is
12 without sufficient knowledge or information to form a belief as to whether the
13 product meets the stated limitation “as recited in” the claims, and on that basis
14 denies the remaining allegations of Paragraph 546.

15 547. Nu Mark denies the allegations of Paragraph 547 of the Complaint.

16 548. Nu Mark admits that the MarkTen product includes a threaded
17 component. Because the claims of the patent have yet to be construed, Nu Mark is
18 without sufficient knowledge or information to form a belief as to whether the
19 product meets the stated limitation “as recited in” the claims, and on that basis
20 denies the remaining allegations of Paragraph 548.

21 549. Nu Mark denies the allegations of Paragraph 549 of the Complaint.

22 550. Because the claims of the patent have yet to be construed, Nu Mark is
23 without sufficient knowledge or information to form a belief as to whether the
24 product meets the stated limitation “as recited in” the claims, and on that basis
25 denies the allegations of Paragraph 550.

26 551. Nu Mark admits that the MarkTen product contains liquid. Because the
27 claims of the patent have yet to be construed, Nu Mark is without sufficient
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1 knowledge or information to form a belief as to whether the product meets the stated
2 limitation “as recited in” the claims, and on that basis denies the remaining
3 allegations of Paragraph 551.

4 552. Nu Mark admits that the MarkTen product includes a threaded
5 component. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the remaining allegations of Paragraph 552.

9 553. Nu Mark admits that the MarkTen product includes a threaded
10 component. Because the claims of the patent have yet to be construed, Nu Mark is
11 without sufficient knowledge or information to form a belief as to whether the
12 product meets the stated limitation “as recited in” the claims, and on that basis
13 denies the remaining allegations of Paragraph 553.

14 554. Nu Mark admits that the MarkTen product includes a threaded
15 component. Because the claims of the patent have yet to be construed, Nu Mark is
16 without sufficient knowledge or information to form a belief as to whether the
17 product meets the stated limitation “as recited in” the claims, and on that basis
18 denies the remaining allegations of Paragraph 554.

19 555. Nu Mark admits that the MarkTen product includes a passage for
20 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
21 without sufficient knowledge or information to form a belief as to whether the
22 product meets the stated limitation “as recited in” the claims, and on that basis
23 denies the remaining allegations of Paragraph 555.

24 556. Nu Mark denies the allegations of Paragraph 556 of the Complaint.

25 557. Nu Mark admits that the MarkTen product includes a threaded
26 component. Because the claims of the patent have yet to be construed, Nu Mark is
27 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 557.

3 558. Nu Mark denies the allegations of Paragraph 558 of the Complaint.

4 559. Because the claims of the patent have yet to be construed, Nu Mark is
5 without sufficient knowledge or information to form a belief as to whether the
6 product meets the stated limitation “as recited in” the claims, and on that basis
7 denies the allegations of Paragraph 559.

8 560. Nu Mark admits that the MarkTen product contains liquid and includes
9 a threaded component. Because the claims of the patent have yet to be construed,
10 Nu Mark is without sufficient knowledge or information to form a belief as to
11 whether the product meets the stated limitation “as recited in” the claims, and on
12 that basis denies the remaining allegations of Paragraph 560.

13 561. Nu Mark admits that the MarkTen product includes a threaded
14 component. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the remaining allegations of Paragraph 561.

18 562. Nu Mark admits that the MarkTen product contains liquid. Because the
19 claims of the patent have yet to be construed, Nu Mark is without sufficient
20 knowledge or information to form a belief as to whether the product meets the stated
21 limitation “as recited in” the claims, and on that basis denies the remaining
22 allegations of Paragraph 562.

23 563. Nu Mark admits that the MarkTen product includes a passage for
24 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
25 without sufficient knowledge or information to form a belief as to whether the
26 product meets the stated limitation “as recited in” the claims, and on that basis
27 denies the remaining allegations of Paragraph 563.

1 564. Nu Mark denies the allegations of Paragraph 564 of the Complaint.

2 565. Nu Mark admits that the MarkTen product includes a threaded
3 component. Because the claims of the patent have yet to be construed, Nu Mark is
4 without sufficient knowledge or information to form a belief as to whether the
5 product meets the stated limitation “as recited in” the claims, and on that basis
6 denies the remaining allegations of Paragraph 565.

7 **MarkTen XL**

8 566. Nu Mark denies the allegations of Paragraph 566 of the Complaint.

9 567. Because the claims of the patent have yet to be construed, Nu Mark is
10 without sufficient knowledge or information to form a belief as to whether the
11 product meets the stated limitation “as recited in” the claims, and on that basis
12 denies the allegations of Paragraph 567.

13 568. Nu Mark admits that the MarkTen XL product contains liquid and
14 includes a threaded component. Because the claims of the patent have yet to be
15 construed, Nu Mark is without sufficient knowledge or information to form a belief
16 as to whether the product meets the stated limitation “as recited in” the claims, and
17 on that basis denies the remaining allegations of Paragraph 568.

18 569. Nu Mark admits that the MarkTen XL product includes a threaded
19 component. Because the claims of the patent have yet to be construed, Nu Mark is
20 without sufficient knowledge or information to form a belief as to whether the
21 product meets the stated limitation “as recited in” the claims, and on that basis
22 denies the remaining allegations of Paragraph 569.

23 570. Nu Mark admits that the MarkTen XL product contains liquid.
24 Because the claims of the patent have yet to be construed, Nu Mark is without
25 sufficient knowledge or information to form a belief as to whether the product meets
26 the stated limitation “as recited in” the claims, and on that basis denies the
27 remaining allegations of Paragraph 570.

1 571. Nu Mark admits that the MarkTen XL product includes a passage for
2 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 571.

6 572. Nu Mark denies the allegations of Paragraph 572 of the Complaint.

7 573. Nu Mark admits that the MarkTen XL product includes a threaded
8 component. Because the claims of the patent have yet to be construed, Nu Mark is
9 without sufficient knowledge or information to form a belief as to whether the
10 product meets the stated limitation “as recited in” the claims, and on that basis
11 denies the remaining allegations of Paragraph 573.

12 574. Nu Mark denies the allegations of Paragraph 574 of the Complaint.

13 575. Nu Mark admits that the MarkTen XL product includes a heating
14 component. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the remaining allegations of Paragraph 575.

18 576. Nu Mark denies the allegations of Paragraph 576 of the Complaint.

19 577. Nu Mark admits that the MarkTen XL product includes a heating
20 component. Because the claims of the patent have yet to be construed, Nu Mark is
21 without sufficient knowledge or information to form a belief as to whether the
22 product meets the stated limitation “as recited in” the claims, and on that basis
23 denies the remaining allegations of Paragraph 577.

24 578. Nu Mark denies the allegations of Paragraph 578 of the Complaint.

25 579. Nu Mark admits that the MarkTen XL product includes absorbent
26 material. Because the claims of the patent have yet to be construed, Nu Mark is
27 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 579.

3 580. Nu Mark denies the allegations of Paragraph 580 of the Complaint.

4 581. Nu Mark admits that the MarkTen XL product includes a passage for
5 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the remaining allegations of Paragraph 581.

9 582. Nu Mark denies the allegations of Paragraph 582 of the Complaint.

10 583. Nu Mark admits that the MarkTen XL product includes a passage for
11 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
12 without sufficient knowledge or information to form a belief as to whether the
13 product meets the stated limitation “as recited in” the claims, and on that basis
14 denies the remaining allegations of Paragraph 583.

15 584. Nu Mark denies the allegations of Paragraph 584 of the Complaint.

16 585. Nu Mark admits that the MarkTen XL product includes a passage for
17 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
18 without sufficient knowledge or information to form a belief as to whether the
19 product meets the stated limitation “as recited in” the claims, and on that basis
20 denies the remaining allegations of Paragraph 585.

21 586. Nu Mark denies the allegations of Paragraph 586 of the Complaint.

22 587. Because the claims of the patent have yet to be construed, Nu Mark is
23 without sufficient knowledge or information to form a belief as to whether the
24 product meets the stated limitation “as recited in” the claims, and on that basis
25 denies the allegations of Paragraph 587.

26 588. Nu Mark admits that the MarkTen XL product contains liquid.
27 Because the claims of the patent have yet to be construed, Nu Mark is without
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1 sufficient knowledge or information to form a belief as to whether the product meets
2 the stated limitation “as recited in” the claims, and on that basis denies the
3 remaining allegations of Paragraph 588.

4 589. Nu Mark admits that the MarkTen XL product includes a threaded
5 component. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the remaining allegations of Paragraph 589.

9 590. Nu Mark admits that the MarkTen XL product includes a threaded
10 component. Because the claims of the patent have yet to be construed, Nu Mark is
11 without sufficient knowledge or information to form a belief as to whether the
12 product meets the stated limitation “as recited in” the claims, and on that basis
13 denies the remaining allegations of Paragraph 590.

14 591. Nu Mark admits that the MarkTen XL product contains liquid and
15 includes a threaded component. Because the claims of the patent have yet to be
16 construed, Nu Mark is without sufficient knowledge or information to form a belief
17 as to whether the product meets the stated limitation “as recited in” the claims, and
18 on that basis denies the remaining allegations of Paragraph 591.

19 592. Nu Mark admits that the MarkTen XL product includes a passage for
20 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
21 without sufficient knowledge or information to form a belief as to whether the
22 product meets the stated limitation “as recited in” the claims, and on that basis
23 denies the remaining allegations of Paragraph 592.

24 593. Nu Mark denies the allegations of Paragraph 593 of the Complaint.

25 594. Nu Mark admits that the MarkTen XL product includes a heating
26 component. Because the claims of the patent have yet to be construed, Nu Mark is
27 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 594.

3 595. Nu Mark denies the allegations of Paragraph 595 of the Complaint.

4 596. Nu Mark admits that the MarkTen XL product includes a threaded
5 component. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the remaining allegations of Paragraph 596.

9 597. Nu Mark denies the allegations of Paragraph 597 of the Complaint.

10 598. Because the claims of the patent have yet to be construed, Nu Mark is
11 without sufficient knowledge or information to form a belief as to whether the
12 product meets the stated limitation “as recited in” the claims, and on that basis
13 denies the allegations of Paragraph 598.

14 599. Nu Mark admits that the MarkTen XL product contains liquid.
15 Because the claims of the patent have yet to be construed, Nu Mark is without
16 sufficient knowledge or information to form a belief as to whether the product meets
17 the stated limitation “as recited in” the claims, and on that basis denies the
18 remaining allegations of Paragraph 599.

19 600. Nu Mark admits that the MarkTen XL product includes a threaded
20 component. Because the claims of the patent have yet to be construed, Nu Mark is
21 without sufficient knowledge or information to form a belief as to whether the
22 product meets the stated limitation “as recited in” the claims, and on that basis
23 denies the remaining allegations of Paragraph 600.

24 601. Nu Mark admits that the MarkTen XL product includes a threaded
25 component. Because the claims of the patent have yet to be construed, Nu Mark is
26 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 601.

3 602. Nu Mark admits that the MarkTen XL product includes a threaded
4 component. Because the claims of the patent have yet to be construed, Nu Mark is
5 without sufficient knowledge or information to form a belief as to whether the
6 product meets the stated limitation “as recited in” the claims, and on that basis
7 denies the remaining allegations of Paragraph 602.

8 603. Nu Mark admits that the MarkTen XL product includes a passage for
9 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
10 without sufficient knowledge or information to form a belief as to whether the
11 product meets the stated limitation “as recited in” the claims, and on that basis
12 denies the remaining allegations of Paragraph 603.

13 604. Nu Mark denies the allegations of Paragraph 604 of the Complaint.

14 605. Nu Mark admits that the MarkTen XL product includes a threaded
15 component. Because the claims of the patent have yet to be construed, Nu Mark is
16 without sufficient knowledge or information to form a belief as to whether the
17 product meets the stated limitation “as recited in” the claims, and on that basis
18 denies the remaining allegations of Paragraph 605.

19 606. Nu Mark denies the allegations of Paragraph 606 of the Complaint.

20 607. Because the claims of the patent have yet to be construed, Nu Mark is
21 without sufficient knowledge or information to form a belief as to whether the
22 product meets the stated limitation “as recited in” the claims, and on that basis
23 denies the allegations of Paragraph 607.

24 608. Nu Mark admits that the MarkTen XL product contains liquid and
25 includes a threaded component. Because the claims of the patent have yet to be
26 construed, Nu Mark is without sufficient knowledge or information to form a belief
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1 as to whether the product meets the stated limitation “as recited in” the claims, and
2 on that basis denies the remaining allegations of Paragraph 608.

3 609. Nu Mark admits that the MarkTen XL product includes a threaded
4 component. Because the claims of the patent have yet to be construed, Nu Mark is
5 without sufficient knowledge or information to form a belief as to whether the
6 product meets the stated limitation “as recited in” the claims, and on that basis
7 denies the remaining allegations of Paragraph 609.

8 610. Nu Mark admits that the MarkTen XL product contains liquid.
9 Because the claims of the patent have yet to be construed, Nu Mark is without
10 sufficient knowledge or information to form a belief as to whether the product meets
11 the stated limitation “as recited in” the claims, and on that basis denies the
12 remaining allegations of Paragraph 610.

13 611. Nu Mark admits that the MarkTen XL product includes a passage for
14 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the remaining allegations of Paragraph 611.

18 612. Nu Mark denies the allegations of Paragraph 612 of the Complaint.

19 613. Nu Mark admits that the MarkTen XL product includes a threaded
20 component. Because the claims of the patent have yet to be construed, Nu Mark is
21 without sufficient knowledge or information to form a belief as to whether the
22 product meets the stated limitation “as recited in” the claims, and on that basis
23 denies the remaining allegations of Paragraph 613.

24 **GreenSmoke**

25 614. Nu Mark denies the allegations of Paragraph 614 of the Complaint.

26 615. Because the claims of the patent have yet to be construed, Nu Mark is
27 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the allegations of Paragraph 615.

3 616. Nu Mark admits that the GreenSmoke product contains liquid and
4 includes a threaded component. Because the claims of the patent have yet to be
5 construed, Nu Mark is without sufficient knowledge or information to form a belief
6 as to whether the product meets the stated limitation “as recited in” the claims, and
7 on that basis denies the remaining allegations of Paragraph 616.

8 617. Nu Mark admits that the GreenSmoke product includes a threaded
9 component. Because the claims of the patent have yet to be construed, Nu Mark is
10 without sufficient knowledge or information to form a belief as to whether the
11 product meets the stated limitation “as recited in” the claims, and on that basis
12 denies the remaining allegations of Paragraph 617.

13 618. Nu Mark admits that the GreenSmoke product contains liquid. Because
14 the claims of the patent have yet to be construed, Nu Mark is without sufficient
15 knowledge or information to form a belief as to whether the product meets the stated
16 limitation “as recited in” the claims, and on that basis denies the remaining
17 allegations of Paragraph 618.

18 619. Nu Mark admits that the GreenSmoke product includes a passage for
19 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
20 without sufficient knowledge or information to form a belief as to whether the
21 product meets the stated limitation “as recited in” the claims, and on that basis
22 denies the remaining allegations of Paragraph 619.

23 620. Nu Mark denies the allegations of Paragraph 620 of the Complaint.

24 621. Nu Mark admits that the GreenSmoke product includes a threaded
25 component. Because the claims of the patent have yet to be construed, Nu Mark is
26 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 621.

3 622. Nu Mark denies the allegations of Paragraph 622 of the Complaint.

4 623. Nu Mark admits that the GreenSmoke product includes a heating
5 component. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the remaining allegations of Paragraph 623.

9 624. Nu Mark denies the allegations of Paragraph 624 of the Complaint.

10 625. Nu Mark admits that the GreenSmoke product includes a heating
11 component. Because the claims of the patent have yet to be construed, Nu Mark is
12 without sufficient knowledge or information to form a belief as to whether the
13 product meets the stated limitation “as recited in” the claims, and on that basis
14 denies the remaining allegations of Paragraph 625.

15 626. Nu Mark denies the allegations of Paragraph 626 of the Complaint.

16 627. Nu Mark admits that the GreenSmoke product includes absorbent
17 material. Because the claims of the patent have yet to be construed, Nu Mark is
18 without sufficient knowledge or information to form a belief as to whether the
19 product meets the stated limitation “as recited in” the claims, and on that basis
20 denies the remaining allegations of Paragraph 627.

21 628. Nu Mark denies the allegations of Paragraph 628 of the Complaint.

22 629. Nu Mark admits that the GreenSmoke product includes a passage for
23 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 629.

27 630. Nu Mark denies the allegations of Paragraph 630 of the Complaint.
28

1 631. Nu Mark admits that the GreenSmoke product includes a passage for
2 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 631.

6 632. Nu Mark denies the allegations of Paragraph 632 of the Complaint.

7 633. Nu Mark admits that the GreenSmoke product includes a passage for
8 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
9 without sufficient knowledge or information to form a belief as to whether the
10 product meets the stated limitation “as recited in” the claims, and on that basis
11 denies the remaining allegations of Paragraph 633.

12 634. Nu Mark denies the allegations of Paragraph 634 of the Complaint.

13 635. Because the claims of the patent have yet to be construed, Nu Mark is
14 without sufficient knowledge or information to form a belief as to whether the
15 product meets the stated limitation “as recited in” the claims, and on that basis
16 denies the allegations of Paragraph 635.

17 636. Nu Mark admits that the GreenSmoke product contains liquid. Because
18 the claims of the patent have yet to be construed, Nu Mark is without sufficient
19 knowledge or information to form a belief as to whether the product meets the stated
20 limitation “as recited in” the claims, and on that basis denies the remaining
21 allegations of Paragraph 636.

22 637. Nu Mark admits that the GreenSmoke product includes a threaded
23 component. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 637.

1 638. Nu Mark admits that the GreenSmoke product includes a threaded
2 component. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 638.

6 639. Nu Mark admits that the GreenSmoke product contains liquid and
7 includes a threaded component. Because the claims of the patent have yet to be
8 construed, Nu Mark is without sufficient knowledge or information to form a belief
9 as to whether the product meets the stated limitation “as recited in” the claims, and
10 on that basis denies the remaining allegations of Paragraph 639.

11 640. Nu Mark admits that the GreenSmoke product includes a passage for
12 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
13 without sufficient knowledge or information to form a belief as to whether the
14 product meets the stated limitation “as recited in” the claims, and on that basis
15 denies the remaining allegations of Paragraph 640.

16 641. Nu Mark denies the allegations of Paragraph 641 of the Complaint.

17 642. Nu Mark admits that the GreenSmoke product includes a heating
18 component. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the remaining allegations of Paragraph 642.

22 643. Nu Mark denies the allegations of Paragraph 643 of the Complaint.

23 644. Nu Mark admits that the GreenSmoke product includes a threaded
24 component. Because the claims of the patent have yet to be construed, Nu Mark is
25 without sufficient knowledge or information to form a belief as to whether the
26 product meets the stated limitation “as recited in” the claims, and on that basis
27 denies the remaining allegations of Paragraph 644.
28

1 645. Nu Mark denies the allegations of Paragraph 645 of the Complaint.

2 646. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the allegations of Paragraph 646.

6 647. Nu Mark admits that the GreenSmoke product contains liquid. Because
7 the claims of the patent have yet to be construed, Nu Mark is without sufficient
8 knowledge or information to form a belief as to whether the product meets the stated
9 limitation “as recited in” the claims, and on that basis denies the remaining
10 allegations of Paragraph 647.

11 648. Nu Mark admits that the GreenSmoke product includes a threaded
12 component. Because the claims of the patent have yet to be construed, Nu Mark is
13 without sufficient knowledge or information to form a belief as to whether the
14 product meets the stated limitation “as recited in” the claims, and on that basis
15 denies the remaining allegations of Paragraph 648.

16 649. Nu Mark admits that the GreenSmoke product includes a threaded
17 component. Because the claims of the patent have yet to be construed, Nu Mark is
18 without sufficient knowledge or information to form a belief as to whether the
19 product meets the stated limitation “as recited in” the claims, and on that basis
20 denies the remaining allegations of Paragraph 649.

21 650. Nu Mark admits that the GreenSmoke product includes a threaded
22 component. Because the claims of the patent have yet to be construed, Nu Mark is
23 without sufficient knowledge or information to form a belief as to whether the
24 product meets the stated limitation “as recited in” the claims, and on that basis
25 denies the remaining allegations of Paragraph 650.

26 651. Nu Mark admits that the GreenSmoke product includes a passage for
27 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
28

1 without sufficient knowledge or information to form a belief as to whether the
2 product meets the stated limitation “as recited in” the claims, and on that basis
3 denies the remaining allegations of Paragraph 651.

4 652. Nu Mark denies the allegations of Paragraph 652 of the Complaint.

5 653. Nu Mark admits that the GreenSmoke product includes a threaded
6 component. Because the claims of the patent have yet to be construed, Nu Mark is
7 without sufficient knowledge or information to form a belief as to whether the
8 product meets the stated limitation “as recited in” the claims, and on that basis
9 denies the remaining allegations of Paragraph 653.

10 654. Nu Mark denies the allegations of Paragraph 654 of the Complaint.

11 655. Because the claims of the patent have yet to be construed, Nu Mark is
12 without sufficient knowledge or information to form a belief as to whether the
13 product meets the stated limitation “as recited in” the claims, and on that basis
14 denies the allegations of Paragraph 655.

15 656. Nu Mark admits that the GreenSmoke product contains liquid and
16 includes a threaded component. Because the claims of the patent have yet to be
17 construed, Nu Mark is without sufficient knowledge or information to form a belief
18 as to whether the product meets the stated limitation “as recited in” the claims, and
19 on that basis denies the remaining allegations of Paragraph 656.

20 657. Nu Mark admits that the GreenSmoke product includes a threaded
21 component. Because the claims of the patent have yet to be construed, Nu Mark is
22 without sufficient knowledge or information to form a belief as to whether the
23 product meets the stated limitation “as recited in” the claims, and on that basis
24 denies the remaining allegations of Paragraph 657.

25 658. Nu Mark admits that the GreenSmoke product contains liquid. Because
26 the claims of the patent have yet to be construed, Nu Mark is without sufficient
27 knowledge or information to form a belief as to whether the product meets the stated
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1 limitation “as recited in” the claims, and on that basis denies the remaining
2 allegations of Paragraph 658.

3 659. Nu Mark admits that the GreenSmoke product includes a passage for
4 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
5 without sufficient knowledge or information to form a belief as to whether the
6 product meets the stated limitation “as recited in” the claims, and on that basis
7 denies the remaining allegations of Paragraph 659.

8 660. Nu Mark denies the allegations of Paragraph 660 of the Complaint.

9 661. Nu Mark admits that the GreenSmoke product includes a threaded
10 component. Because the claims of the patent have yet to be construed, Nu Mark is
11 without sufficient knowledge or information to form a belief as to whether the
12 product meets the stated limitation “as recited in” the claims, and on that basis
13 denies the remaining allegations of Paragraph 661.

14 662. Nu Mark denies the allegations of Paragraph 662 of the Complaint.

15 663. Nu Mark denies the allegations of Paragraph 663 of the Complaint.

16 664. Nu Mark denies the allegations of Paragraph 664 of the Complaint.

17 665. Nu Mark admits the allegations of Paragraph 665 of the Complaint.

18 666. Nu Mark admits that Exhibit P to the Complaint states: “MarkTen® e-
19 vapor products are designed to work together, in order to give vapers the best
20 possible vaping experience. Using MarkTen® e-vapor products with non-
21 MarkTen® e-vapor products may be unsafe, and is not advised.” Nu Mark denies
22 the remaining allegations of Paragraph 666 of the Complaint.

23 667. Nu Mark admits that Exhibit P to the Complaint states: “MarkTen® e-
24 vapor products are designed to work together, in order to give vapers the best
25 possible vaping experience. Using MarkTen® e-vapor products with non-
26 MarkTen® e-vapor products may be unsafe, and is not advised.” Nu Mark denies
27 the remaining allegations of Paragraph 667 of the Complaint.
28

1 668. Nu Mark admits that Exhibit P to the Complaint states: “Customers
2 should note that using MarkTen® e-vapor products with another brand's e-vapor
3 products will invalidate the warranty.” Nu Mark denies the remaining allegations of
4 Paragraph 668 of the Complaint.

5 669. Nu Mark denies the allegations of Paragraph 669 of the Complaint..

6 670. Nu Mark denies the allegations of Paragraph 670 of the Complaint.

7 671. Nu Mark denies the allegations of Paragraph 671 of the Complaint.

8 672. Nu Mark denies the allegations of Paragraph 672 of the Complaint.

9 673. Nu Mark denies the allegations of Paragraph 673 of the Complaint.

10 **ANSWER TO SEVENTH CLAIM FOR RELIEF**

11 674. Answering Paragraph 674 of the Complaint, Nu Mark incorporates its
12 responses in Paragraphs 1-673 by reference as if fully set forth herein.

13 675. Nu Mark admits that United States Patent No. 8,893,726 (the “’726
14 Patent”) was issued by the USPTO on November 25, 2014. Nu Mark denies that the
15 patent is valid. Nu Mark is without sufficient knowledge or information to form a
16 belief as to the remaining allegations of Paragraph 675 of the Complaint, and on that
17 basis denies them.

18 676. Nu Mark admits that it has had knowledge of the ‘726 patent. Nu Mark
19 denies the remaining allegations of Paragraph 676 of the Complaint.

20 677. Nu Mark admits that on May 11, 2015, Vapor Corp served a subpoena
21 identifying the ‘726 patent on Altria Group, Inc. Nu Mark denies the remaining
22 allegations of Paragraph 677 of the Complaint.

23 678. Nu Mark admits that Altria Group, Inc. filed a motion to quash a
24 subpoena served by Vapor Corp in the District Court for the Eastern District of
25 Virginia on May 26, 2015. Nu Mark denies the remaining allegations of Paragraph
26 678 of the Complaint.

1 679. Nu Mark admits that it is a subsidiary of Altria Group, Inc. and that it
2 has had knowledge of the '726 Patent since at least May 11, 2015. Nu Mark denies
3 the remaining allegations of Paragraph 679 of the Complaint.

4 680. Nu Mark is without sufficient knowledge or information to form a
5 belief as to the allegations of Paragraph 680 of the Complaint, and on that basis
6 denies them.

7 681. Nu Mark denies the allegations in Paragraph 681 of the Complaint.

8 682. Nu Mark denies the allegations in Paragraph 682 of the Complaint.

9 683. Nu Mark denies the allegations in Paragraph 683 of the Complaint.

10 684. Nu Mark denies the allegations in Paragraph 684 of the Complaint.

11 **MarkTen**

12 685. Nu Mark denies the allegations of Paragraph 685 of the Complaint.

13 686. Because the claims of the patent have yet to be construed, Nu Mark is
14 without sufficient knowledge or information to form a belief as to whether the
15 product meets the stated limitation "as recited in" the claims, and on that basis
16 denies the allegations of Paragraph 686.

17 687. Nu Mark admits that the MarkTen product includes a housing.
18 Because the claims of the patent have yet to be construed, Nu Mark is without
19 sufficient knowledge or information to form a belief as to whether the product meets
20 the stated limitation "as recited in" the claims, and on that basis denies the
21 remaining allegations of Paragraph 687.

22 688. Nu Mark admits that the MarkTen product contains liquid. Because the
23 claims of the patent have yet to be construed, Nu Mark is without sufficient
24 knowledge or information to form a belief as to whether the product meets the stated
25 limitation "as recited in" the claims, and on that basis denies the remaining
26 allegations of Paragraph 688.

1 689. Nu Mark admits that the MarkTen product includes a passage for
2 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 689.

6 690. Because the claims of the patent have yet to be construed, Nu Mark is
7 without sufficient knowledge or information to form a belief as to whether the
8 product meets the stated limitation “as recited in” the claims, and on that basis
9 denies the allegations of Paragraph 690.

10 691. Nu Mark admits that the MarkTen product contains liquid. Because the
11 claims of the patent have yet to be construed, Nu Mark is without sufficient
12 knowledge or information to form a belief as to whether the product meets the stated
13 limitation “as recited in” the claims, and on that basis denies the remaining
14 allegations of Paragraph 691.

15 692. Nu Mark admits that the MarkTen product includes a heating
16 component. Because the claims of the patent have yet to be construed, Nu Mark is
17 without sufficient knowledge or information to form a belief as to whether the
18 product meets the stated limitation “as recited in” the claims, and on that basis
19 denies the remaining allegations of Paragraph 692.

20 693. Nu Mark denies the allegations of Paragraph 693 of the Complaint.

21 694. Nu Mark admits that the MarkTen product contains liquid. Because the
22 claims of the patent have yet to be construed, Nu Mark is without sufficient
23 knowledge or information to form a belief as to whether the product meets the stated
24 limitation “as recited in” the claims, and on that basis denies the remaining
25 allegations of Paragraph 694.

26 695. Nu Mark denies the allegations of Paragraph 695 of the Complaint.
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1 696. Nu Mark admits that the MarkTen product includes a housing.
2 Because the claims of the patent have yet to be construed, Nu Mark is without
3 sufficient knowledge or information to form a belief as to whether the product meets
4 the stated limitation “as recited in” the claims, and on that basis denies the
5 remaining allegations of Paragraph 696.

6 697. Nu Mark denies the allegations of Paragraph 697 of the Complaint.

7 698. Nu Mark admits that the MarkTen product includes a battery
8 component and a sensor component. Because the claims of the patent have yet to be
9 construed, Nu Mark is without sufficient knowledge or information to form a belief
10 as to whether the product meets the stated limitation “as recited in” the claims, and
11 on that basis denies the remaining allegations of Paragraph 698.

12 699. Nu Mark denies the allegations of Paragraph 699 of the Complaint.

13 700. Nu Mark admits that the MarkTen product includes a heating
14 component. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the remaining allegations of Paragraph 700.

18 701. Nu Mark denies the allegations of Paragraph 701 of the Complaint.

19 702. Because the claims of the patent have yet to be construed, Nu Mark is
20 without sufficient knowledge or information to form a belief as to whether the
21 product meets the stated limitation “as recited in” the claims, and on that basis
22 denies the allegations of Paragraph 702.

23 703. Nu Mark denies the allegations of Paragraph 703 of the Complaint.

24 704. Because the claims of the patent have yet to be construed, Nu Mark is
25 without sufficient knowledge or information to form a belief as to whether the
26 product meets the stated limitation “as recited in” the claims, and on that basis
27 denies the allegations of Paragraph 704.
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1 705. Nu Mark admits that the MarkTen product includes a housing.
2 Because the claims of the patent have yet to be construed, Nu Mark is without
3 sufficient knowledge or information to form a belief as to whether the product meets
4 the stated limitation “as recited in” the claims, and on that basis denies the
5 remaining allegations of Paragraph 705.

6 706. Nu Mark admits that the MarkTen product contains liquid. Because the
7 claims of the patent have yet to be construed, Nu Mark is without sufficient
8 knowledge or information to form a belief as to whether the product meets the stated
9 limitation “as recited in” the claims, and on that basis denies the remaining
10 allegations of Paragraph 706.

11 707. Nu Mark admits that the MarkTen product includes a passage for
12 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
13 without sufficient knowledge or information to form a belief as to whether the
14 product meets the stated limitation “as recited in” the claims, and on that basis
15 denies the remaining allegations of Paragraph 707.

16 708. Because the claims of the patent have yet to be construed, Nu Mark is
17 without sufficient knowledge or information to form a belief as to whether the
18 product meets the stated limitation “as recited in” the claims, and on that basis
19 denies the allegations of Paragraph 708.

20 709. Nu Mark admits that the MarkTen product includes a heating
21 component. Because the claims of the patent have yet to be construed, Nu Mark is
22 without sufficient knowledge or information to form a belief as to whether the
23 product meets the stated limitation “as recited in” the claims, and on that basis
24 denies the remaining allegations of Paragraph 709.

25 710. Nu Mark denies the allegations of Paragraph 710 of the Complaint.

26 711. Because the claims of the patent have yet to be construed, Nu Mark is
27 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the allegations of Paragraph 711.

3 712. Nu Mark admits that the MarkTen product includes a housing.
4 Because the claims of the patent have yet to be construed, Nu Mark is without
5 sufficient knowledge or information to form a belief as to whether the product meets
6 the stated limitation “as recited in” the claims, and on that basis denies the
7 remaining allegations of Paragraph 712.

8 713. Nu Mark admits that the MarkTen product includes a heating
9 component. Because the claims of the patent have yet to be construed, Nu Mark is
10 without sufficient knowledge or information to form a belief as to whether the
11 product meets the stated limitation “as recited in” the claims, and on that basis
12 denies the remaining allegations of Paragraph 713.

13 714. Nu Mark admits that the MarkTen product includes a battery
14 component. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the remaining allegations of Paragraph 714.

18 715. Nu Mark admits that the MarkTen product includes a passage for
19 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
20 without sufficient knowledge or information to form a belief as to whether the
21 product meets the stated limitation “as recited in” the claims, and on that basis
22 denies the remaining allegations of Paragraph 715.

23 716. Nu Mark admits that the MarkTen product contains liquid. Because the
24 claims of the patent have yet to be construed, Nu Mark is without sufficient
25 knowledge or information to form a belief as to whether the product meets the stated
26 limitation “as recited in” the claims, and on that basis denies the remaining
27 allegations of Paragraph 716.
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1 717. Nu Mark denies the allegations of Paragraph 717 of the Complaint.

2 718. Nu Mark admits that the MarkTen product includes a sensor
3 component. Because the claims of the patent have yet to be construed, Nu Mark is
4 without sufficient knowledge or information to form a belief as to whether the
5 product meets the stated limitation “as recited in” the claims, and on that basis
6 denies the remaining allegations of Paragraph 718.

7 719. Nu Mark denies the allegations of Paragraph 719 of the Complaint.

8 720. Nu Mark admits that the MarkTen product includes a heating
9 component. Because the claims of the patent have yet to be construed, Nu Mark is
10 without sufficient knowledge or information to form a belief as to whether the
11 product meets the stated limitation “as recited in” the claims, and on that basis
12 denies the remaining allegations of Paragraph 720.

13 **MarkTen XL**

14 721. Nu Mark denies the allegations of Paragraph 721 of the Complaint.

15 722. Because the claims of the patent have yet to be construed, Nu Mark is
16 without sufficient knowledge or information to form a belief as to whether the
17 product meets the stated limitation “as recited in” the claims, and on that basis
18 denies the allegations of Paragraph 722.

19 723. Nu Mark admits that the MarkTen XL product includes a housing.
20 Because the claims of the patent have yet to be construed, Nu Mark is without
21 sufficient knowledge or information to form a belief as to whether the product meets
22 the stated limitation “as recited in” the claims, and on that basis denies the
23 remaining allegations of Paragraph 723.

24 724. Nu Mark admits that the MarkTen XL product contains liquid.
25 Because the claims of the patent have yet to be construed, Nu Mark is without
26 sufficient knowledge or information to form a belief as to whether the product meets
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1 the stated limitation “as recited in” the claims, and on that basis denies the
2 remaining allegations of Paragraph 724.

3 725. Nu Mark admits that the MarkTen XL product includes a passage for
4 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
5 without sufficient knowledge or information to form a belief as to whether the
6 product meets the stated limitation “as recited in” the claims, and on that basis
7 denies the remaining allegations of Paragraph 725.

8 726. Because the claims of the patent have yet to be construed, Nu Mark is
9 without sufficient knowledge or information to form a belief as to whether the
10 product meets the stated limitation “as recited in” the claims, and on that basis
11 denies the allegations of Paragraph 726.

12 727. Nu Mark admits that the MarkTen XL product contains liquid.
13 Because the claims of the patent have yet to be construed, Nu Mark is without
14 sufficient knowledge or information to form a belief as to whether the product meets
15 the stated limitation “as recited in” the claims, and on that basis denies the
16 remaining allegations of Paragraph 727.

17 728. Nu Mark admits that the MarkTen XL product includes a heating
18 component. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the remaining allegations of Paragraph 728.

22 729. Nu Mark denies the allegations of Paragraph 729 of the Complaint.

23 730. Nu Mark admits that the MarkTen XL product contains liquid.
24 Because the claims of the patent have yet to be construed, Nu Mark is without
25 sufficient knowledge or information to form a belief as to whether the product meets
26 the stated limitation “as recited in” the claims, and on that basis denies the
27 remaining allegations of Paragraph 730.
28

1 731. Nu Mark denies the allegations of Paragraph 731 of the Complaint.

2 732. Nu Mark admits that the MarkTen XL product includes a housing.
3 Because the claims of the patent have yet to be construed, Nu Mark is without
4 sufficient knowledge or information to form a belief as to whether the product meets
5 the stated limitation “as recited in” the claims, and on that basis denies the
6 remaining allegations of Paragraph 732.

7 733. Nu Mark denies the allegations of Paragraph 733 of the Complaint.

8 734. Nu Mark admits that the MarkTen XL product includes a battery
9 component and a sensor component. Because the claims of the patent have yet to be
10 construed, Nu Mark is without sufficient knowledge or information to form a belief
11 as to whether the product meets the stated limitation “as recited in” the claims, and
12 on that basis denies the remaining allegations of Paragraph 734.

13 735. Nu Mark denies the allegations of Paragraph 735 of the Complaint.

14 736. Nu Mark admits that the MarkTen XL product includes a heating
15 component. Because the claims of the patent have yet to be construed, Nu Mark is
16 without sufficient knowledge or information to form a belief as to whether the
17 product meets the stated limitation “as recited in” the claims, and on that basis
18 denies the remaining allegations of Paragraph 736.

19 737. Nu Mark denies the allegations of Paragraph 737 of the Complaint.

20 738. Because the claims of the patent have yet to be construed, Nu Mark is
21 without sufficient knowledge or information to form a belief as to whether the
22 product meets the stated limitation “as recited in” the claims, and on that basis
23 denies the allegations of Paragraph 738.

24 739. Nu Mark denies the allegations of Paragraph 739 of the Complaint.

25 740. Because the claims of the patent have yet to be construed, Nu Mark is
26 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the allegations of Paragraph 740.

3 741. Nu Mark admits that the MarkTen XL product includes a housing.
4 Because the claims of the patent have yet to be construed, Nu Mark is without
5 sufficient knowledge or information to form a belief as to whether the product meets
6 the stated limitation “as recited in” the claims, and on that basis denies the
7 remaining allegations of Paragraph 741.

8 742. Nu Mark admits that the MarkTen XL product contains liquid.
9 Because the claims of the patent have yet to be construed, Nu Mark is without
10 sufficient knowledge or information to form a belief as to whether the product meets
11 the stated limitation “as recited in” the claims, and on that basis denies the
12 remaining allegations of Paragraph 742.

13 743. Nu Mark admits that the MarkTen XL product includes a passage for
14 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the remaining allegations of Paragraph 743.

18 744. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the allegations of Paragraph 744.

22 745. Nu Mark admits that the MarkTen XL product includes a heating
23 component. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 745.

27 746. Nu Mark denies the allegations of Paragraph 746 of the Complaint.
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1 747. Because the claims of the patent have yet to be construed, Nu Mark is
2 without sufficient knowledge or information to form a belief as to whether the
3 product meets the stated limitation “as recited in” the claims, and on that basis
4 denies the allegations of Paragraph 747.

5 748. Nu Mark admits that the MarkTen XL product includes a housing.
6 Because the claims of the patent have yet to be construed, Nu Mark is without
7 sufficient knowledge or information to form a belief as to whether the product meets
8 the stated limitation “as recited in” the claims, and on that basis denies the
9 remaining allegations of Paragraph 748.

10 749. Nu Mark admits that the MarkTen XL product includes a heating
11 component. Because the claims of the patent have yet to be construed, Nu Mark is
12 without sufficient knowledge or information to form a belief as to whether the
13 product meets the stated limitation “as recited in” the claims, and on that basis
14 denies the remaining allegations of Paragraph 749.

15 750. Nu Mark admits that the MarkTen XL product includes a battery
16 component. Because the claims of the patent have yet to be construed, Nu Mark is
17 without sufficient knowledge or information to form a belief as to whether the
18 product meets the stated limitation “as recited in” the claims, and on that basis
19 denies the remaining allegations of Paragraph 750.

20 751. Nu Mark admits that the MarkTen XL product includes a passage for
21 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
22 without sufficient knowledge or information to form a belief as to whether the
23 product meets the stated limitation “as recited in” the claims, and on that basis
24 denies the remaining allegations of Paragraph 751.

25 752. Nu Mark admits that the MarkTen XL product contains liquid.
26 Because the claims of the patent have yet to be construed, Nu Mark is without
27 sufficient knowledge or information to form a belief as to whether the product meets
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1 the stated limitation “as recited in” the claims, and on that basis denies the
2 remaining allegations of Paragraph 752.

3 753. Nu Mark denies the allegations of Paragraph 753 of the Complaint.

4 754. Nu Mark admits that the MarkTen XL product includes a sensor
5 component. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the remaining allegations of Paragraph 754.

9 755. Nu Mark denies the allegations of Paragraph 755 of the Complaint.

10 756. Nu Mark admits that the MarkTen XL product includes a heating
11 component. Because the claims of the patent have yet to be construed, Nu Mark is
12 without sufficient knowledge or information to form a belief as to whether the
13 product meets the stated limitation “as recited in” the claims, and on that basis
14 denies the remaining allegations of Paragraph 756.

15 **GreenSmoke**

16 757. Nu Mark denies the allegations of Paragraph 757 of the Complaint.

17 758. Because the claims of the patent have yet to be construed, Nu Mark is
18 without sufficient knowledge or information to form a belief as to whether the
19 product meets the stated limitation “as recited in” the claims, and on that basis
20 denies the allegations of Paragraph 758.

21 759. Nu Mark admits that the GreenSmoke product includes a housing.
22 Because the claims of the patent have yet to be construed, Nu Mark is without
23 sufficient knowledge or information to form a belief as to whether the product meets
24 the stated limitation “as recited in” the claims, and on that basis denies the
25 remaining allegations of Paragraph 759.

26 760. Nu Mark admits that the GreenSmoke product contains liquid. Because
27 the claims of the patent have yet to be construed, Nu Mark is without sufficient
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1 knowledge or information to form a belief as to whether the product meets the stated
2 limitation “as recited in” the claims, and on that basis denies the remaining
3 allegations of Paragraph 760.

4 761. Nu Mark admits that the GREENSMOKE product includes a passage
5 for airflow. Because the claims of the patent have yet to be construed, Nu Mark is
6 without sufficient knowledge or information to form a belief as to whether the
7 product meets the stated limitation “as recited in” the claims, and on that basis
8 denies the remaining allegations of Paragraph 761.

9 762. Because the claims of the patent have yet to be construed, Nu Mark is
10 without sufficient knowledge or information to form a belief as to whether the
11 product meets the stated limitation “as recited in” the claims, and on that basis
12 denies the allegations of Paragraph 762.

13 763. Nu Mark admits that the GreenSmoke product contains liquid. Because
14 the claims of the patent have yet to be construed, Nu Mark is without sufficient
15 knowledge or information to form a belief as to whether the product meets the stated
16 limitation “as recited in” the claims, and on that basis denies the remaining
17 allegations of Paragraph 763.

18 764. Nu Mark admits that the GreenSmoke product includes a heating
19 component. Because the claims of the patent have yet to be construed, Nu Mark is
20 without sufficient knowledge or information to form a belief as to whether the
21 product meets the stated limitation “as recited in” the claims, and on that basis
22 denies the remaining allegations of Paragraph 764.

23 765. Nu Mark denies the allegations of Paragraph 765 of the Complaint.

24 766. Nu Mark admits that the GreenSmoke product contains liquid. Because
25 the claims of the patent have yet to be construed, Nu Mark is without sufficient
26 knowledge or information to form a belief as to whether the product meets the stated
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1 limitation “as recited in” the claims, and on that basis denies the remaining
2 allegations of Paragraph 766.

3 767. Nu Mark denies the allegations of Paragraph 767 of the Complaint.

4 768. Nu Mark admits that the GreenSmoke product includes a housing.
5 Because the claims of the patent have yet to be construed, Nu Mark is without
6 sufficient knowledge or information to form a belief as to whether the product meets
7 the stated limitation “as recited in” the claims, and on that basis denies the
8 remaining allegations of Paragraph 768.

9 769. Nu Mark denies the allegations of Paragraph 769 of the Complaint.

10 770. Nu Mark admits that the GreenSmoke product includes a battery
11 component and a sensor component. Because the claims of the patent have yet to be
12 construed, Nu Mark is without sufficient knowledge or information to form a belief
13 as to whether the product meets the stated limitation “as recited in” the claims, and
14 on that basis denies the remaining allegations of Paragraph 770.

15 771. Nu Mark denies the allegations of Paragraph 771 of the Complaint.

16 772. Nu Mark admits that the GreenSmoke product includes a heating
17 component. Because the claims of the patent have yet to be construed, Nu Mark is
18 without sufficient knowledge or information to form a belief as to whether the
19 product meets the stated limitation “as recited in” the claims, and on that basis
20 denies the remaining allegations of Paragraph 772.

21 773. Nu Mark denies the allegations of Paragraph 773 of the Complaint.

22 774. Because the claims of the patent have yet to be construed, Nu Mark is
23 without sufficient knowledge or information to form a belief as to whether the
24 product meets the stated limitation “as recited in” the claims, and on that basis
25 denies the allegations of Paragraph 774.

26 775. Nu Mark denies the allegations of Paragraph 775 of the Complaint.
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1 776. Because the claims of the patent have yet to be construed, Nu Mark is
2 without sufficient knowledge or information to form a belief as to whether the
3 product meets the stated limitation “as recited in” the claims, and on that basis
4 denies the allegations of Paragraph 776.

5 777. Nu Mark admits that the GreenSmoke product includes a housing.
6 Because the claims of the patent have yet to be construed, Nu Mark is without
7 sufficient knowledge or information to form a belief as to whether the product meets
8 the stated limitation “as recited in” the claims, and on that basis denies the
9 remaining allegations of Paragraph 777.

10 778. Nu Mark admits that the GreenSmoke product contains liquid. Because
11 the claims of the patent have yet to be construed, Nu Mark is without sufficient
12 knowledge or information to form a belief as to whether the product meets the stated
13 limitation “as recited in” the claims, and on that basis denies the remaining
14 allegations of Paragraph 778.

15 779. Nu Mark admits that the GreenSmoke product includes a passage for
16 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
17 without sufficient knowledge or information to form a belief as to whether the
18 product meets the stated limitation “as recited in” the claims, and on that basis
19 denies the remaining allegations of Paragraph 779.

20 780. Because the claims of the patent have yet to be construed, Nu Mark is
21 without sufficient knowledge or information to form a belief as to whether the
22 product meets the stated limitation “as recited in” the claims, and on that basis
23 denies the allegations of Paragraph 780.

24 781. Nu Mark admits that the GreenSmoke product includes a heating
25 component. Because the claims of the patent have yet to be construed, Nu Mark is
26 without sufficient knowledge or information to form a belief as to whether the
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1 product meets the stated limitation “as recited in” the claims, and on that basis
2 denies the remaining allegations of Paragraph 781.

3 782. Nu Mark denies the allegations of Paragraph 782 of the Complaint.

4 783. Because the claims of the patent have yet to be construed, Nu Mark is
5 without sufficient knowledge or information to form a belief as to whether the
6 product meets the stated limitation “as recited in” the claims, and on that basis
7 denies the allegations of Paragraph 783.

8 784. Nu Mark admits that the GreenSmoke product includes a housing.
9 Because the claims of the patent have yet to be construed, Nu Mark is without
10 sufficient knowledge or information to form a belief as to whether the product meets
11 the stated limitation “as recited in” the claims, and on that basis denies the
12 remaining allegations of Paragraph 784.

13 785. Nu Mark admits that the GreenSmoke product includes a heating
14 component. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the remaining allegations of Paragraph 785.

18 786. Nu Mark admits that the GreenSmoke product includes a battery
19 component. Because the claims of the patent have yet to be construed, Nu Mark is
20 without sufficient knowledge or information to form a belief as to whether the
21 product meets the stated limitation “as recited in” the claims, and on that basis
22 denies the remaining allegations of Paragraph 786.

23 787. Nu Mark admits that the GreenSmoke product includes a passage for
24 airflow. Because the claims of the patent have yet to be construed, Nu Mark is
25 without sufficient knowledge or information to form a belief as to whether the
26 product meets the stated limitation “as recited in” the claims, and on that basis
27 denies the remaining allegations of Paragraph 787.

1 788. Nu Mark admits that the GreenSmoke product contains liquid. Because
2 the claims of the patent have yet to be construed, Nu Mark is without sufficient
3 knowledge or information to form a belief as to whether the product meets the stated
4 limitation “as recited in” the claims, and on that basis denies the remaining
5 allegations of Paragraph 788.

6 789. Nu Mark denies the allegations of Paragraph 789 of the Complaint.

7 790. Nu Mark admits that the GreenSmoke product includes a sensor
8 component. Because the claims of the patent have yet to be construed, Nu Mark is
9 without sufficient knowledge or information to form a belief as to whether the
10 product meets the stated limitation “as recited in” the claims, and on that basis
11 denies the remaining allegations of Paragraph 790.

12 791. Nu Mark denies the allegations of Paragraph 791 of the Complaint.

13 792. Nu Mark admits that the GreenSmoke product includes a heating
14 component. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the remaining allegations of Paragraph 792.

18 793. Nu Mark denies the allegations of Paragraph 793 of the Complaint.

19 794. Nu Mark denies the allegations of Paragraph 794 of the Complaint.

20 795. Nu Mark denies the allegations of Paragraph 795 of the Complaint.

21 796. Nu Mark admits the allegations of Paragraph 796 of the Complaint.

22 797. Nu Mark admits that Exhibit P to the Complaint states: “MarkTen® e-
23 vapor products are designed to work together, in order to give vapers the best
24 possible vaping experience. Using MarkTen® e-vapor products with non-
25 MarkTen® e-vapor products may be unsafe, and is not advised.” Nu Mark denies
26 the remaining allegations of Paragraph 797 of the Complaint.

1 798. Nu Mark admits that Exhibit P to the Complaint states: “MarkTen® e-
2 vapor products are designed to work together, in order to give vapers the best
3 possible vaping experience. Using MarkTen® e-vapor products with non-
4 MarkTen® e-vapor products may be unsafe, and is not advised.” Nu Mark denies
5 the remaining allegations of Paragraph 798 of the Complaint.

6 799. Nu Mark admits that Exhibit P to the Complaint states: “Customers
7 should note that using MarkTen® e-vapor products with another brand's e-vapor
8 products will invalidate the warranty.” Nu Mark denies the remaining allegations of
9 Paragraph 799 of the Complaint.

10 800. Nu Mark denies the allegations of Paragraph 800 of the Complaint..

11 801. Nu Mark denies the allegations of Paragraph 801 of the Complaint.

12 802. Nu Mark denies the allegations of Paragraph 802 of the Complaint.

13 803. Nu Mark denies the allegations of Paragraph 803 of the Complaint.

14 804. Nu Mark denies the allegations of Paragraph 804 of the Complaint.

15 **ANSWER TO EIGHTH CLAIM FOR RELIEF**

16 805. Answering Paragraph 805 of the Complaint, Nu Mark incorporates its
17 responses in Paragraphs 1-804 by reference as if fully set forth herein.

18 806. Nu Mark admits that United States Patent No. 8,899,239 (the “’239
19 Patent”) was issued by the USPTO on December 2, 2014. Nu Mark denies that the
20 patent is valid. Nu Mark is without sufficient knowledge or information to form a
21 belief as to the remaining allegations of Paragraph 806 of the Complaint, and on that
22 basis denies them.

23 807. Nu Mark admits that it has had knowledge of the ‘239 patent. Nu Mark
24 denies the remaining allegations of Paragraph 807 of the Complaint.

25 808. Nu Mark admits that on May 11, 2015, Vapor Corp served a subpoena
26 identifying the ‘239 patent on Altria Group, Inc. Nu Mark denies the remaining
27 allegations of Paragraph 808 of the Complaint.
28

1 809. Nu Mark admits that Altria Group, Inc. filed a motion to quash a
2 subpoena served by Vapor Corp in the District Court for the Eastern District of
3 Virginia on May 26, 2015. Nu Mark denies the remaining allegations of Paragraph
4 809 of the Complaint.

5 810. Nu Mark admits that it is a subsidiary of Altria Group, Inc. and that it
6 has had knowledge of the '239 Patent since at least May 11, 2015. Nu Mark denies
7 the remaining allegations of Paragraph 810 of the Complaint.

8 811. Nu Mark is without sufficient knowledge or information to form a
9 belief as to the allegations of Paragraph 811 of the Complaint, and on that basis
10 denies them.

11 812. Nu Mark denies the allegations in Paragraph 812 of the Complaint.

12 813. Nu Mark denies the allegations in Paragraph 813 of the Complaint.

13 814. Nu Mark denies the allegations in Paragraph 814 of the Complaint.

14 815. Nu Mark denies the allegations in Paragraph 815 of the Complaint.

15 816. Nu Mark denies the allegations in Paragraph 816 of the Complaint.

16 **MarkTen**

17 817. Nu Mark denies the allegations of Paragraph 817 of the Complaint.

18 818. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation "as recited in" the claims, and on that basis
21 denies the allegations of Paragraph 818.

22 819. Nu Mark admits that the MarkTen product includes a housing.
23 Because the claims of the patent have yet to be construed, Nu Mark is without
24 sufficient knowledge or information to form a belief as to whether the product meets
25 the stated limitation "as recited in" the claims, and on that basis denies the
26 remaining allegations of Paragraph 819.

1 820. Nu Mark admits that the MarkTen product includes a sensor
2 component. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 820.

6 821. Nu Mark admits that the MarkTen product includes an LED
7 component. Because the claims of the patent have yet to be construed, Nu Mark is
8 without sufficient knowledge or information to form a belief as to whether the
9 product meets the stated limitation “as recited in” the claims, and on that basis
10 denies the remaining allegations of Paragraph 821.

11 822. Nu Mark admits that the MarkTen product includes an LED
12 component. Because the claims of the patent have yet to be construed, Nu Mark is
13 without sufficient knowledge or information to form a belief as to whether the
14 product meets the stated limitation “as recited in” the claims, and on that basis
15 denies the remaining allegations of Paragraph 822.

16 823. Nu Mark admits that the MarkTen product includes an LED
17 component. Because the claims of the patent have yet to be construed, Nu Mark is
18 without sufficient knowledge or information to form a belief as to whether the
19 product meets the stated limitation “as recited in” the claims, and on that basis
20 denies the remaining allegations of Paragraph 823.

21 824. Nu Mark denies the allegations of Paragraph 824 of the Complaint.

22 825. Nu Mark admits that the MarkTen product includes a battery
23 component. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 825.

27 826. Nu Mark denies the allegations of Paragraph 826 of the Complaint.
28

1 827. Nu Mark admits that the MarkTen product includes a housing.
2 Because the claims of the patent have yet to be construed, Nu Mark is without
3 sufficient knowledge or information to form a belief as to whether the product meets
4 the stated limitation “as recited in” the claims, and on that basis denies the
5 remaining allegations of Paragraph 827.

6 828. Nu Mark denies the allegations of Paragraph 828 of the Complaint.

7 829. Nu Mark admits that the MarkTen product includes an LED
8 component. Because the claims of the patent have yet to be construed, Nu Mark is
9 without sufficient knowledge or information to form a belief as to whether the
10 product meets the stated limitation “as recited in” the claims, and on that basis
11 denies the remaining allegations of Paragraph 829.

12 **MarkTen XL**

13 830. Nu Mark denies the allegations of Paragraph 830 of the Complaint.

14 831. Because the claims of the patent have yet to be construed, Nu Mark is
15 without sufficient knowledge or information to form a belief as to whether the
16 product meets the stated limitation “as recited in” the claims, and on that basis
17 denies the allegations of Paragraph 831.

18 832. Nu Mark admits that the MarkTen XL product includes a housing.
19 Because the claims of the patent have yet to be construed, Nu Mark is without
20 sufficient knowledge or information to form a belief as to whether the product meets
21 the stated limitation “as recited in” the claims, and on that basis denies the
22 remaining allegations of Paragraph 832.

23 833. Nu Mark admits that the MarkTen XL product includes a sensor
24 component. Because the claims of the patent have yet to be construed, Nu Mark is
25 without sufficient knowledge or information to form a belief as to whether the
26 product meets the stated limitation “as recited in” the claims, and on that basis
27 denies the remaining allegations of Paragraph 833.
28

1 834. Nu Mark admits that the MarkTen XL product includes an LED
2 component. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 834.

6 835. Nu Mark admits that the MarkTen XL product includes an LED
7 component. Because the claims of the patent have yet to be construed, Nu Mark is
8 without sufficient knowledge or information to form a belief as to whether the
9 product meets the stated limitation “as recited in” the claims, and on that basis
10 denies the remaining allegations of Paragraph 835.

11 836. Nu Mark admits that the MarkTen XL product includes an LED
12 component. Because the claims of the patent have yet to be construed, Nu Mark is
13 without sufficient knowledge or information to form a belief as to whether the
14 product meets the stated limitation “as recited in” the claims, and on that basis
15 denies the remaining allegations of Paragraph 836.

16 837. Nu Mark denies the allegations of Paragraph 837 of the Complaint.

17 838. Nu Mark admits that the MarkTen XL product includes a battery
18 component. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the remaining allegations of Paragraph 838.

22 839. Nu Mark denies the allegations of Paragraph 839 of the Complaint.

23 840. Nu Mark admits that the MarkTen XL product includes a housing.
24 Because the claims of the patent have yet to be construed, Nu Mark is without
25 sufficient knowledge or information to form a belief as to whether the product meets
26 the stated limitation “as recited in” the claims, and on that basis denies the
27 remaining allegations of Paragraph 840.
28

1 **GreenSmoke**

2 841. Nu Mark denies the allegations of Paragraph 841 of the Complaint.

3 842. Because the claims of the patent have yet to be construed, Nu Mark is
4 without sufficient knowledge or information to form a belief as to whether the
5 product meets the stated limitation “as recited in” the claims, and on that basis
6 denies the allegations of Paragraph 842.

7 843. Nu Mark admits that the GreenSmoke product includes a housing.
8 Because the claims of the patent have yet to be construed, Nu Mark is without
9 sufficient knowledge or information to form a belief as to whether the product meets
10 the stated limitation “as recited in” the claims, and on that basis denies the
11 remaining allegations of Paragraph 843.

12 844. Nu Mark admits that the GreenSmoke product includes a sensor
13 component. Because the claims of the patent have yet to be construed, Nu Mark is
14 without sufficient knowledge or information to form a belief as to whether the
15 product meets the stated limitation “as recited in” the claims, and on that basis
16 denies the remaining allegations of Paragraph 844.

17 845. Nu Mark admits that the GreenSmoke product includes an LED
18 component. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the remaining allegations of Paragraph 845.

22 846. Nu Mark admits that the GreenSmoke product includes an LED
23 component. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 846.

1 847. Nu Mark admits that the GreenSmoke product includes an LED
2 component. Because the claims of the patent have yet to be construed, Nu Mark is
3 without sufficient knowledge or information to form a belief as to whether the
4 product meets the stated limitation “as recited in” the claims, and on that basis
5 denies the remaining allegations of Paragraph 847.

6 848. Nu Mark denies the allegations of Paragraph 848 of the Complaint.

7 849. Nu Mark admits that the GreenSmoke product includes a battery
8 component. Because the claims of the patent have yet to be construed, Nu Mark is
9 without sufficient knowledge or information to form a belief as to whether the
10 product meets the stated limitation “as recited in” the claims, and on that basis
11 denies the remaining allegations of Paragraph 849.

12 850. Nu Mark denies the allegations of Paragraph 850 of the Complaint.

13 851. Nu Mark admits that the GreenSmoke product includes a housing.
14 Because the claims of the patent have yet to be construed, Nu Mark is without
15 sufficient knowledge or information to form a belief as to whether the product meets
16 the stated limitation “as recited in” the claims, and on that basis denies the
17 remaining allegations of Paragraph 851.

18 852. Because the claims of the patent have yet to be construed, Nu Mark is
19 without sufficient knowledge or information to form a belief as to whether the
20 product meets the stated limitation “as recited in” the claims, and on that basis
21 denies the allegations of Paragraph 852.

22 853. Nu Mark admits that the GreenSmoke product includes an LED
23 component. Because the claims of the patent have yet to be construed, Nu Mark is
24 without sufficient knowledge or information to form a belief as to whether the
25 product meets the stated limitation “as recited in” the claims, and on that basis
26 denies the remaining allegations of Paragraph 853.

27 854. Nu Mark denies the allegations of Paragraph 854 of the Complaint.
28

1 855. Nu Mark denies the allegations of Paragraph 855 of the Complaint.

2 856. Nu Mark denies the allegations of Paragraph 856 of the Complaint.

3 857. Nu Mark admits the allegations of Paragraph 857 of the Complaint.

4 858. Nu Mark admits that Exhibit P to the Complaint states: “MarkTen® e-
5 vapor products are designed to work together, in order to give vapers the best
6 possible vaping experience. Using MarkTen® e-vapor products with non-
7 MarkTen® e-vapor products may be unsafe, and is not advised.” Nu Mark denies
8 the remaining allegations of Paragraph 858 of the Complaint.

9 859. Nu Mark admits that Exhibit P to the Complaint states: “MarkTen® e-
10 vapor products are designed to work together, in order to give vapers the best
11 possible vaping experience. Using MarkTen® e-vapor products with non-
12 MarkTen® e-vapor products may be unsafe, and is not advised.” Nu Mark denies
13 the remaining allegations of Paragraph 859 of the Complaint.

14 860. Nu Mark admits that Exhibit P to the Complaint states: “Customers
15 should note that using MarkTen® e-vapor products with another brand's e-vapor
16 products will invalidate the warranty.” Nu Mark denies the remaining allegations of
17 Paragraph 860 of the Complaint.

18 861. Nu Mark denies the allegations of Paragraph 861 of the Complaint..

19 862. Nu Mark denies the allegations of Paragraph 862 of the Complaint.

20 863. Nu Mark denies the allegations of Paragraph 863 of the Complaint.

21 864. Nu Mark denies the allegations of Paragraph 864 of the Complaint.

22 865. Nu Mark denies the allegations of Paragraph 865 of the Complaint.

23 **PRAYER FOR RELIEF**

24 Nu Mark denies that Plaintiffs are entitled to any relief in this action.
25
26
27
28

1 **AFFIRMATIVE DEFENSES**

2 Nu Mark asserts the following affirmative defenses. In asserting these
3 defenses, Nu Mark does not assume the burden of proof for any issue with respect to
4 which applicable law places the burden of proof on Plaintiffs.

5 **FIRST AFFIRMATIVE DEFENSE**

6 **(Invalidity)**

7 866. On information and belief, one or more asserted claims of the ‘742
8 patent, ‘957 patent, ‘331 patent, ‘805 patent, ‘628 patent, ‘752 patent, ‘726 patent,
9 and ‘239 patent (each an “Asserted Patent” and collectively the “Asserted Patents”)
10 are invalid for failure to satisfy all the requirements of Part II of Title 35 of the
11 United States Code, including 35 U.S.C. §§ 101, 102, 103 and/or 112.

12 **SECOND AFFIRMATIVE DEFENSE**

13 **(Non-infringement)**

14 867. Nu Mark has not directly or indirectly infringed, contributed to the
15 infringement of, or induced the infringement of any valid claim of any Asserted
16 Patent, and is not liable for infringement thereof.

17 **THIRD AFFIRMATIVE DEFENSE**

18 **(Adequate Remedy At Law)**

19 868. Plaintiffs are not entitled to injunctive relief because any alleged injury
20 to Plaintiffs is not immediate and irreparable, and Plaintiffs have an adequate
21 remedy at law. On information and belief, it is the policy of Plaintiff to license the
22 patents in suit.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 **(Limitation on Damages)**

25 869. Plaintiffs’ claim for damages against Nu Mark is limited by 35 U.S.C.
26 § 287.

1 **FIFTH AFFIRMATIVE DEFENSE**

2 **(No Costs)**

3 870. Plaintiffs are barred from recovering costs in connection with this
4 action under 35 U.S.C. § 288.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 **(Venue)**

7 871. Venue is not proper in this district under 28 U.S.C. § 1400(b).
8 Alternatively, this Court constitutes an inconvenient forum for this action and it
9 should be dismissed or transferred pursuant to the doctrine of forum non conveniens
10 or 28 U.S.C. § 1404(a).

11 **COUNTERCLAIMS**

12 Counterclaimant Nu Mark LLC (“Nu Mark”) alleges its counterclaims
13 for declaratory relief against counterdefendants Fontem Ventures B.V. (“Fontem
14 Ventures”) and Fontem Holdings 1 (“Fontem Holdings”) (collectively, “Plaintiffs”).

15 **JURISDICTION AND VENUE**

16 1. On April 4, 2016, Plaintiffs filed a complaint in this Court alleging that
17 Nu Mark has infringed and is infringing claims 2 and 3 of United States Patent No.
18 8,365,742; claims 1, 3, 6, 7, 8, 9, 10, 11, 14, 16, 17, 18, 21, 22, and 23 of United
19 States Patent No. 8,375,957; claims 1, 2, 4, and 5 of United States Patent No.
20 8,393,331; claims 1, 6, 7, 8, and 9 of United States Patent No. 8,689,805; claims 1,
21 2, 3, 4, and 8 of United States Patent No. 8,490,628; claims 1, 2, 3, 4, 5, 7, 8, 10, 11,
22 12, 13, 14, 15, 19, and 20 of United States Patent No. 8,863,752; claims 1, 2, 3, 4, 9,
23 10, 14, 15, 16, and 17 of United States Patent No. 8,893,726; and claims 1, 2, 9, and
24 10 of United States Patent No. 8,899,239 (the “Asserted Claims”). Nu Mark asserts
25 that the Asserted Claims are invalid. Accordingly, an actual, justiciable controversy
26 exists between Nu Mark and Plaintiffs concerning the validity of each Asserted
27 Claim, and such controversy can be redressed by a judgment of this Court. This
28

1 Court's jurisdiction over Nu Mark's counterclaims arises under the Declaratory
2 Judgment Act, 28 U.S.C. §§ 2201-2202; and the patent laws of the United States, for
3 which jurisdiction arises under 28 U.S.C. § 1331 and 1338(a).

4 2. Plaintiffs are subject to personal jurisdiction in this Court because,
5 among other reasons, they have filed their Complaint in this Court.

6 3. Nu Mark disputes that this is the proper venue for Plaintiffs' claims
7 against Nu Mark. To the extent venue lies in this judicial district for Plaintiff's
8 claims, venue for these counterclaims is proper pursuant to 28 U.S.C. § 1391(b).

9 **PARTIES**

10 4. Nu Mark LLC is a Limited Liability Company organized and existing
11 under the laws of the State of Virginia, having its principal place of business at 6603
12 West Broad Street, Richmond Virginia 23230.

13 5. On information and belief, Fontem Ventures is a company organized
14 and existing under the laws of the Netherlands, with its principal European offices at
15 12th Floor, 101 Barbara Strozziilaan, 1083 HN Amsterdam, the Netherlands, and its
16 principal United States offices at 1100 South Tryon Street, Suite 350, Charlotte,
17 North Carolina 28203.

18 6. On information and belief, Fontem Holdings is a company organized
19 and existing under the laws of the Netherlands, with its principal European offices at
20 12th Floor, 101 Barbara Strozziilaan, 1083 HN Amsterdam, the Netherlands, and its
21 principal United States offices at 1100 South Tryon Street, Suite 350, Charlotte,
22 North Carolina 28203.

23 **COUNTERCLAIM NO. 1**

24 **(Invalidity of United States Patent No. 8,365,742)**

25 7. Nu Mark realleges and incorporates Paragraphs 1 through 6 of its
26 Counterclaim by reference as if fully set forth herein.

1 8. On information and belief, the Asserted Claims of U.S. Patent No.
2 8,365,742 are invalid because they fail to satisfy all the requirements of Part II of
3 Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103 and/or 112.

4 9. Nu Mark is entitled to a declaratory judgment that the Asserted Claims
5 of U.S. Patent No. 8,365,742 are invalid.

6 **COUNTERCLAIM NO. 2**

7 **(Invalidity of United States Patent No. 8,375,957)**

8 10. Nu Mark realleges and incorporates Paragraphs 1 through 6 of its
9 Counterclaim by reference as if fully set forth herein.

10 11. On information and belief, the Asserted Claims of U.S. Patent No.
11 8,375,957 are invalid because they fail to satisfy all the requirements of Part II of
12 Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103 and/or 112.

13 12. Nu Mark is entitled to a declaratory judgment that the Asserted Claims
14 of U.S. Patent No. 8,375,957 are invalid.

15 **COUNTERCLAIM NO. 3**

16 **(Invalidity of United States Patent No. 8,393,331)**

17 13. Nu Mark realleges and incorporates Paragraphs 1 through 6 of its
18 Counterclaim by reference as if fully set forth herein.

19 14. On information and belief, the Asserted Claims of U.S. Patent No.
20 8,393,331 are invalid because they fail to satisfy all the requirements of Part II of
21 Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103 and/or 112.

22 15. Nu Mark is entitled to a declaratory judgment that the Asserted Claims
23 of U.S. Patent No. 8,393,331 are invalid.

24 **COUNTERCLAIM NO. 4**

25 **(Invalidity of United States Patent No. 8,689,805)**

26 16. Nu Mark realleges and incorporates Paragraphs 1 through 6 of its
27 Counterclaim by reference as if fully set forth herein.

1 17. On information and belief, the Asserted Claims of U.S. Patent No.
2 8,689,805 are invalid because they fail to satisfy all the requirements of Part II of
3 Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103 and/or 112.

4 18. Nu Mark is entitled to a declaratory judgment that the Asserted Claims
5 of U.S. Patent No. 8,689,805 are invalid.

6 **COUNTERCLAIM NO. 5**

7 **(Invalidity of United States Patent No. 8,490,628)**

8 19. Nu Mark realleges and incorporates Paragraphs 1 through 6 of its
9 Counterclaim by reference as if fully set forth herein.

10 20. On information and belief, the Asserted Claims of U.S. Patent No.
11 8,490,628 are invalid because they fail to satisfy all the requirements of Part II of
12 Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103 and/or 112.

13 21. Nu Mark is entitled to a declaratory judgment that the Asserted Claims
14 of U.S. Patent No. 8,490,628 are invalid.

15 **COUNTERCLAIM NO. 6**

16 **(Invalidity of United States Patent No. 8,863,752)**

17 22. Nu Mark realleges and incorporates Paragraphs 1 through 6 of its
18 Counterclaim by reference as if fully set forth herein.

19 23. On information and belief, the Asserted Claims of U.S. Patent No.
20 8,863,752 are invalid because they fail to satisfy all the requirements of Part II of
21 Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103 and/or 112.

22 24. Nu Mark is entitled to a declaratory judgment that the Asserted Claims
23 of U.S. Patent No. 8,863,752 are invalid.

24 **COUNTERCLAIM NO. 7**

25 **(Invalidity of United States Patent No. 8,893,726)**

26 25. Nu Mark realleges and incorporates Paragraphs 1 through 6 of its
27 Counterclaim by reference as if fully set forth herein.

26. On information and belief, the Asserted Claims of U.S. Patent No. 8,893,726 are invalid because they fail to satisfy all the requirements of Part II of Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103 and/or 112.

27. Nu Mark is entitled to a declaratory judgment that the Asserted Claims of U.S. Patent No. 8,893,726 are invalid.

COUNTERCLAIM NO. 8

(Invalidity of United States Patent No. 8,899,239)

28. Nu Mark realleges and incorporates Paragraphs 1 through 6 of its Counterclaim by reference as if fully set forth herein.

29. On information and belief, the Asserted Claims of U.S. Patent No. 8,899,239 are invalid because they fail to satisfy all the requirements of Part II of Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103 and/or 112.

30. Nu Mark is entitled to a declaratory judgment that the Asserted Claims of U.S. Patent No. 8,899,239 are invalid.

DEMAND FOR JURY TRIAL

Defendant and Counterclaimant Nu Mark hereby demands a trial by jury on all issues so triable.

PRAAYER FOR RELIEF

WHEREFORE, Nu Mark prays for judgment as follows:

That the Court enter judgment in favor of Nu Mark and against Plaintiffs on the claims in Plaintiffs' Complaint;

That Plaintiffs' claims be dismissed in their entirety with prejudice;

That Plaintiffs take nothing by way of their claims;

That the Court enter judgment in favor of Nu Mark on each of its Counterclaims against Plaintiffs;

That each of the Asserted Claims be declared invalid;

1 That Nu Mark be awarded its costs and attorneys' fees under 35 U.S.C. § 285;
2 and
3 That Nu Mark be awarded such other relief as this Court deems proper.
4

5
6 DATED: June 27, 2016

Respectfully submitted,

7 MUNGER, TOLLES & OLSON LLP
8 GREGORY P. STONE
9 PETER A. DETRE
10 PETER E. GRATZINGER
11 ZACHARY M. BRIERS
12 WEIL, GOTSHAL & MANGES LLP
13 ELIZABETH STOTLAND WEISWASSER
14 (pro hac vice forthcoming)
15 ANISH DESAI (pro hac vice pending)
16 STEPEHN BOSCO (pro hac vice pending)
17

18 By: /s/ Gregory P. Stone
19 GREGORY P. STONE
20 Attorneys for Nu Mark LLC
21
22
23
24
25
26
27
28